

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)

Hugh H. Wang, M.D.)

File No. 12-1999-103838

Physician's and Surgeon's)
Certificate No. G 8475)

Respondent)
_____)

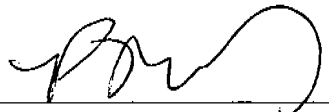
DECISION

The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on October 8, 2004

IT IS SO ORDERED October 1, 2004

MEDICAL BOARD OF CALIFORNIA

By: 
Ronald L. Moy, M.D., Chair
Panel B
Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 LYNNE K. DOMBROWSKI, State Bar No. 128080
Deputy Attorney General
3 BRENDA P. REYES, State Bar No. 129718
Deputy Attorney General
4 California Department of Justice
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
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7 Attorneys for Complainant
8

9 **BEFORE THE**
10 **DIVISION OF MEDICAL QUALITY**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

15 HUGH H. WANG, M.D.
2700 Grant Street, Suite 200
16 Concord, CA 94520

17 Physician's & Surgeon's Certificate No. G8475

18 Respondent.

Case No. 12 1999 103838
OAH No. N2003120528

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
20 proceeding that the following matters are true:

PARTIES

21 1. Ron Joseph (Complainant) was the Executive Director of the Medical
22 Board of California at the time he brought this action solely in his official capacity and has been
23 succeeded by David Thornton who is the Interim Executive Director of the Medical Board of
24 California and is represented in this matter by Bill Lockyer, Attorney General of the State of
25 California, by Lynne K. Dombrowski and Brenda P. Reyes, Deputy Attorneys General.

26 2. Hugh H. Wang, M.D. (Respondent) is represented in this proceeding by
27 attorney James N. Eimers, whose address is Fountaingrove Corporate Centre I, 3510 Unocal
28 Place, Suite 200, Santa Rosa, CA 95403-0918.

3. On or about April 5, 1963, the Medical Board of California issued Physician's & Surgeon's Certificate No. G8475 to Hugh H. Wang, M.D. . The Certificate expired on July 31, 2004, and has not been renewed.

JURISDICTION

4. Accusation No. 12 1999 103838 was filed before the Division of Medical Quality (Division) for the Medical Board of California, Department of Consumer Affairs, and was amended on August 22, 2003. The First Amended Accusation is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 11, 2000. Respondent timely filed his Notices of Defense contesting the Accusation and First Amended Accusation. A copy of First Amended Accusation No. 12 1999 103838 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 12 1999 103838. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent understands that the charges and allegations in First Amended
3 Accusation No. 12 1999 103838, if proven at a hearing, constitute cause for imposing discipline
4 upon his Physician's & Surgeon's Certificate.

5 9. For the purpose of resolving the First Amended Accusation without the
6 expense and uncertainty of further proceedings, Respondent agrees that, at a hearing,
7 Complainant could establish a factual basis for the charges in the First Amended Accusation and
8 that those charges constitute cause for discipline. Respondent hereby gives up his right to
9 contest that cause for discipline exists based on those charges.

10 10. Respondent understands that by signing this stipulation he enables the
11 Division to issue an order accepting the surrender of his Physician's & Surgeon's Certificate
12 without further process.

13 RESERVATION

14 11. The admissions made by Respondent herein are only for the purposes of
15 this proceeding, or any other proceedings in which the Division of Medical Quality, Medical
16 Board of California or other professional licensing agency is involved, and shall not be
17 admissible in any other criminal or civil proceeding.

18 CONTINGENCY

19 12. This stipulation shall be subject to approval by the Division of Medical
20 Quality. Respondent understands and agrees that counsel for Complainant and the staff of the
21 Medical Board of California may communicate directly with the Division regarding this
22 stipulation and settlement, without notice to or participation by Respondent or his counsel. By
23 signing the stipulation, Respondent understands and agrees that he may not withdraw his
24 agreement or seek to rescind the stipulation prior to the time the Division considers and acts upon
25 it. If the Division fails to adopt this stipulation as its Decision and Order, the Stipulated
26 Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall
27 be inadmissible in any legal action between the parties, and the Division shall not be disqualified
28 from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the (Division) may, without further notice or formal proceeding, issue and enter the following Order:

ORDER.

IT IS HEREBY ORDERED that Physician's & Surgeon's Certificate No. G8475,
issued to Respondent Hugh H. Wang, M.D. is surrendered and accepted by the Division of
Medical Quality.

15. Respondent shall lose all rights and privileges as a physician and surgeon in California as of the effective date of the Division's Decision and Order.

16. Respondent shall cause to be delivered to the Division both his wall certificate and pocket license certificate, on or before the effective date of the Decision and Order.

17. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Division shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in First Amended Accusation No. 12 1999 103838 shall be deemed to be true, correct, and admitted by Respondent when the Division determines whether to grant or deny the petition.

18. Should Respondent ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in First Amended Accusation No. 12 1999 103838 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

1 19. Respondent shall pay the Division its costs of investigation and
2 enforcement in the amount of \$20,000.00 prior to issuance of a new or reinstated license.

3 ACCEPTANCE

4 I have carefully read the above Stipulated Surrender of License and Order and
5 have fully discussed it with my attorney, James N. Eimers. I understand the stipulation and the
6 effect it will have on my Physician's & Surgeon's Certificate. I enter into this Stipulated
7 Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound
8 by the Decision and Order of the Division of Medical Quality, Medical Board of California.

9 DATED: 8/30/04.

Hugh H. Wang M.D.
HUGH H. WANG, M.D.
Respondent

11
12 I have read and fully discussed with Respondent Hugh H. Wang, M.D. the terms
13 and conditions and other matters contained in this Stipulated Surrender of License and Order. I
14 approve its form and content.

15 DATED: 8/30/04.

James N. Eimers
JAMES N. EIMERS
Attorney for Respondent

17
18 ENDORSEMENT

19 The foregoing Stipulated Surrender of License and Order is hereby respectfully
20 submitted for consideration by the Division of Medical Quality, Medical Board of California of
21 the Department of Consumer Affairs.

22 DATED: 9/8/04.

BILL LOCKYER, Attorney General
of the State of California

Lynne K. Dombrowski
LYNNE K. DOMBROWSKI
Deputy Attorney General

Attorneys for Complainant

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Exhibit A

Accusation No. 12 1999 103838

1 BILL LOCKYER, Attorney General
of the State of California
2 VIVIEN H. HARA, SBN 84589
Supervising Deputy Attorney General
3 BRENDA P. REYES, SBN 129718
Deputy Attorney General
4 LYNNE K. DOMBROWSKI, SBN 128080
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5 California Department of Justice
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6 San Francisco, California 94102-7004
Telephone: (415) 703-5578
7 Facsimile: (415) 703-5480

8 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO JUL 22 2003
BY [Signature]

9
10 BEFORE THE
DIVISION OF MEDICAL QUALITY
11 MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:) No. 12-1999-103838
13)
HUGH H. WANG, M.D.) FIRST AMENDED ACCUSATION
14 2700 Grant Street, Suite 200)
Concord, CA 94520)
15 Physician's and Surgeon's)
Certificate No. G8475)
16 _____)

17
18 Ronald Joseph, complainant herein, charges and alleges as follows:

19 PARTIES

20 1. Complainant is the Executive Director of the Medical Board of the State
21 of California (hereinafter "Board") and makes these charges and allegations solely in his official
22 capacity.

23 2. On or about April 5, 1963, the Board issued to respondent Hugh H. Wang,
24 M.D. (hereinafter "respondent") Physician and Surgeon's Certificate No. G8475. Said certificate
25 is current and will expire on July 31, 2004. No prior disciplinary action has been taken against
26 said certificate. Respondent is a supervisor of a physician assistant and his supervisor's license
27 number SA20668 has been in delinquent status with an expiration date of July 31, 1996.

JURISDICTION

3. Section 2001 of the Business and Professions Code^{1/} provides for the existence of the Board.

4. Section 2003 provides for the existence of the Division of Medical Quality (hereinafter, "Division") within the Board.

5. Section 2004 provides, in pertinent part, that the Division is responsible for the administration and hearing of disciplinary actions involving enforcement of the Medical Practice Act (§ 2000 et seq.) and the carrying out of disciplinary action appropriate to findings made by a medical quality review committee, the Division, or an administrative law judge.

6. Section 2220 provides, in pertinent part, that except as otherwise provided by law, the Division may take action against all persons guilty of violating the provisions of the Medical Practice Act (§ 2000 et seq.). The Division shall enforce and administer the Medical Practice Act as to physician and surgeon certificate holders, and its powers include, but are not limited to, investigating complaints from the public, from other licensees, or from health care facilities, that a physician and surgeon may be guilty of unprofessional conduct.

7. Section 2227 provides, in part, that the Board shall take disciplinary action against a licensee charged with and found guilty of unprofessional conduct and if the license is placed on probation be required to pay the costs of probation monitoring upon order of the division.

8. Section 2234 provides, in relevant part, as follows:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts.

1. All references are to the Business and Professions Code unless otherwise specified.

1 “(d) Incompetence.

2 “(e) The commission of any act involving dishonesty or corruption
3 which is substantially related to the qualifications, functions, or duties of a
4 physician and surgeon.”

5 9. Section 23.7 provides that “License” means license, certificate, registration
6 or other means to engage in a business or profession regulated by this Code or referred to in
7 Section 1000 or 3600.

8 10. Section 119(e) provides, in pertinent part, that any person who “knowingly
9 permits any unlawful use of a license issued to him” is guilty of a misdemeanor.

10 11. Section 125 states:

11 “Any person licensed under . . . Division 2 (commencing with section 500) is
12 guilty of a misdemeanor and subject to the disciplinary provisions of this code
13 applicable to him or her, who conspires with a person not so licensed to violate
14 any provision of this code, or who, with intent to aid or assist that person in
15 violating those provisions does either of the following:

- 16 (a) Allows his or her license to be used by that person.
17 (b) Acts as her or his agent or partner.”

18 12. Section 125.3 for the recovery of costs as follows:

19 “The Board may request the administrative law judge to direct any licensee
20 found to have committed a violation of the licensing act to pay the Board a sum
21 not to exceed the reasonable costs of investigation and enforcement of the case.”

22 13. Section 145 states in part as follows:

23 “The Legislature finds and declare that:

- 24 (a) Unlicensed activity in the professions and vocations regulated by the
25 Department of Consumer Affairs is a threat to the health, welfare, and
26 safety of the people of the State of California.”(emphasis added.)

27 **False And/or Misleading Statements**

 14. Section 651 states, in relevant part, as follows:

 “(a) It is unlawful for any person licensed under this division...to disseminate or
 cause to be disseminated, any form of public communication containing a false,
 fraudulent, misleading, or deceptive statement, claim,...for the purpose of or likely
 to induce, directly or indirectly, the rendering of professional services...in
 connection with the professional practice or business for which he or she is
 licensed. A “public communication” as used in this section includes, but is not
 limited to, communication by means of mail, ...internet or other electronic
 communication.”

15. Section 652.5 states:

"Except as otherwise provided in this article, any violation of this article constitutes a misdemeanor as to any and all persons, whether or not licensed under this division, and is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both imprisonment and fine."

"(b) A false, fraudulent, misleading, or deceptive statement, claim,...includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of the failure to disclose material facts. . .

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived. . .

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action."

Clinical Lab Testing/Blood Draws

16. Section 1242 states as follows:

"Any person duly licensed under the provisions of this chapter to perform tests called for in a clinical laboratory may perform skin tests for specific diseases, arterial puncture, venipuncture, or skin puncture for purposes of withdrawing blood or for clinical laboratory test purposes as defined by regulations established by the department and upon specific authorization from any person in accordance with the authority granted under any provisions of law relating to the healing arts."

17. Section 1242.5 states in relevant part as follows:

"...The department may by regulation authorize laboratory personnel certified pursuant to section 1246 to perform venipuncture, arterial puncture, or skin puncture for the purposes of withdrawing blood or for clinical laboratory purposes, as defined by regulations established by the department."

18. Section 1242.6 states in relevant part as follows:

"Any registered nurse licensed under the provisions of Chapter 6 may perform arterial puncture, venipuncture, or skin puncture for the purpose of withdrawing blood or for test purposes upon the authorization from any licensed physician and surgeon ..."

1 19. Section 1244 sets forth the requirements for a non-diagnostic general
2 health assessment program, and does not authorize unsupervised venipuncture. It states, in
3 relevant part, as follows:

4 “(a) Nothing in this chapter shall restrict, limit, or prevent a program of
nondiagnostic general health assessment provided that: . . .

5 (4) The program maintains a supervisory committee consisting of at a
6 minimum, a licensed physician and surgeon and a laboratory technologist licensed
pursuant to this chapter.

7 (5) The supervisory committee adopts written protocols that shall be
followed in the program and that shall contain all of the following:

8 (A) Provision of written information to individuals to be assessed that
shall include, but not be limited to, the following: . . .

9 (ii) The limitations, including the nondiagnostic nature, of assessment
examinations of biological specimens performed in the program. . . .

10 (iv) The need for follow up with licensed sources of care for confirmation,
diagnosis, and treatment as appropriate.

11 (B) Proper use of each device utilized in the program including the
operation of analyzers, maintenance of equipment and supplies, and performance
of quality control procedures including the determination of both accuracy and
12 reproducibility of measurements in accordance with instructions provided by the
manufacturer or the assessment device used.

13 (C) Proper procedures to be employed when drawing blood, if blood
specimens are obtained.

14 (D) Proper procedures to be employed in handling and disposing of all
biological specimens to be obtained and materials contaminated by those
biological specimens.

15 (E) Proper procedures to be employed in response to fainting, excessive
bleeding, or other medical emergencies.

16 (F) Reporting of assessment results to the individual being assessed.

17 (G) Referral and follow-up to licensed sources of care as indicated.

18 (b) If skin puncture to obtain a blood specimen is to be performed in a program of
nondiagnostic general health assessment, the individual performing the skin
puncture shall be either:

19 (1) Authorized to perform skin puncture under this chapter.

20 (2) Any person who possesses a statement signed by a licensed physician
and surgeon that attests that the named person has received adequate
21 training in the proper procedure to be employed in skin puncture.

22 (c) A program of nondiagnostic general health assessment that fails to meet the
requirements set forth in subdivisions (a) and (b) shall not operate.

23 (d) For purposes of this section, “skin puncture” means the collection of a blood
specimen by the finger prick method only and does not include venipuncture,
24 arterial puncture, or any other procedure for obtaining a blood specimen.”

25 20. Section 1246 states in relevant part:

26 “(a) Except as provided in subdivision (b), and in section 23158 of the Vehicle
Code, **an unlicensed person employed by a licensed clinical laboratory may**
27 **perform venipuncture or skin puncture for the purpose of withdrawing**

1 **blood or for clinical laboratory test purposes upon specific authorization**
2 **from a licensed physician and surgeon provided that he or she meets both of**
3 **the following requirements.**

4 (1) He or she works under the supervision of a person licensed under this
5 chapter or of a licensed physician and surgeon or of a licensed registered nurse. A
6 person licensed under this chapter, **a licensed physician and surgeon**, or a
7 registered nurse **shall be physically available to be summoned to the scene of**
8 **the venipuncture within five minutes during the performance of those**
9 **procedures.**

10 (2) He or she has been trained by a licensed physician and surgeon or by a
11 clinical laboratory bioanalyst in the proper procedure to be employed when
12 withdrawing blood in accordance with training requirements established by the
13 State Department of Health Services **and has a statement signed by the**
14 **instructing physician and surgeon or by the instructing clinical laboratory**
15 **bioanalyst that such training has been successfully completed.”** (emphasis
16 added.)

17 Practice of Audiology/Audiometric Testing

18 21. Section 2530.2 states in relevant part as follows:

19 “(h) The **practice of audiology** means the application of principles, methods, and
20 procedures of measurement, testing, appraisal, prediction, consultation,
21 counseling, instruction related to auditory, vestibular, and related functions and
22 the modification of communicative disorders involving ...auditory behavior or
23 other aberrant behavior resulting from auditory dysfunction; and the planning,
24 directing, conducting, supervising, or **participating in programs of**
25 **identification of auditory disorders**, hearing conservation, cerumen removal,
26 aural habilitation, and rehabilitation, including, hearing aid recommendation and
27 evaluation procedures including, but not limited to, specifying amplification
requirements and evaluation of the results thereof, auditory training, and speech
reading.

(i) **Audiology aide** means any person, meeting the minimum requirements
established by the board, who **works directly under the supervision of an**
audiologist.”(emphasis added.)

22. Section 2530.3 subsection (b) states as follows:

“A person represents himself to be an **audiologist** when he or she holds himself or
herself out to the public **by any title or description of services incorporating**
the terms audiology, audiologist, audiological, hearing clinic, hearing
clinician, hearing therapist, or any similar titles.”(emphasis added.)

23. Section 2530.5 states in relevant part as follows:

“(a) Nothing in this chapter shall be construed as restricting hearing testing
conducted by a licensed physician and surgeon or by persons conducting hearing
tests **under the direct supervision of a physician and surgeon.”** (emphasis
added.)

1
2 24. Section 2532 states as follows:

3 "No person shall engage in the practice of speech-language pathology or
4 audiology or represent himself or herself as a speech-language pathologist or
audiologist unless he or she is licensed in accordance with this chapter."

5 25. Section 2536 states:

6 "A speech-language pathology corporation or an audiology corporation is a
7 corporation which is authorized to render professional services as defined in
8 Section 13401 of the Corporation Code, so long as that corporation and its
9 shareholders, officers, directors, and employees rendering professional services
who are speech-language pathologists or audiologists are in compliance with the
Moscone-Knox Professional Corporation Act, this article, and all other statutes
and regulations now or hereafter enacted or adopted pertaining to the corporation
and the conduct of its affairs..."

10 26. Section 2537.1 states as follows:

11 "A speech-language pathology corporation or an audiology corporation shall not
12 do or fail to do any act that the doing or failing to do would constitute
unprofessional conduct under any statute or regulation now or hereafter in effect.
13 In the conduct of its practice, it shall observe and be bound by those statutes and
regulations to the same extent as a person holding a license under this chapter."

14
15 Medical Assistants

16 27. Section 2069 defines the scope and practice for a medical assistant and
17 states, in part:

18 "Notwithstanding any other provision of law, a medical assistant may administer
19 medication only by intradermal, subcutaneous, or intramuscular injections and
perform skin tests and additional technical supportive services **upon the specific
authorization and supervision of a licensed physician and surgeon. . .**"

20 (b) "As used in this section and Sections 2070 and 2071, the following definitions
shall apply:

21 (1) "**Medical Assistant**" means a person who may be unlicensed, who performs
22 basic administrative, clerical, and technical supportive services in compliance
23 with this section and Section 2070 for a licensed physician and surgeon..., or a
group thereof, for a medical corporation..., or for a health care service plan, who is
24 at least 18 years of age, and who has had at least the minimum amount of hours of
appropriate training pursuant to standards established by the division of licensing.
The medical assistant shall be issued a certificate by the training institution or
25 instructor indicating satisfactory completion of the required training. A copy of
the certificate shall be retained as a record by each employer of the medical
assistant."

26 (2) "**Specific authorization**" means a specific written order prepared by the
supervising physician and surgeon. . . authorizing the procedure to be performed
27 on the patient, which shall be placed in the patient's medical record; or a standing
order prepared by the supervising physician and surgeon. . . authorizing the

procedures to be performed, the duration of which shall be consistent with accepted medical practice. A notation of the standing order shall be placed on the patient's medical record.

(3) **"Supervision"** means the supervision of procedures authorized by this section by a licensed physician and surgeon. . . within the scope of his or her practice, who shall be physically present in the treatment facility during the performance of those procedures.

(4) **"Technical supportive services"** means simple routine medical tasks and procedures that may be safely performed by a medical assistant who has limited training and who functions under the supervision of a licensed physician and surgeon. . .

(c) Nothing in this section shall be construed as authorizing the licensure of medical assistants. Nothing in this section shall be construed as authorizing the administration of local anesthetic agents by a medical assistant. **Nothing in this section shall be construed as authorizing the division to adopt any regulations that violate the prohibitions on diagnosis or treatment in section 2052.**" (emphasis added.)

28. Section 2070 states in part as follows:

"Notwithstanding any other provision of law, a medical assistant may perform venipuncture or skin puncture for the purpose of withdrawing blood upon specific authorization and under the supervision of a licensed physician and surgeon. . . , if prior thereto the medical assistant has had at least the minimum amount of hours of appropriate training pursuant to the standards established by the Division of Licensing. The medical assistant shall be issued a certificate by the training institution or instructor indicating satisfactory completion of the training required. A copy of the certificate shall be retained as a record by each employer of the medical assistant." (emphasis added.)

Respiratory Care Practice

29. Section 3702 defines respiratory care, in part, as follows:

"Respiratory care as a practice means a health care profession employed under the supervision of a medical director in the therapy, management, rehabilitation, **diagnostic evaluation**, and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated aspects of cardiopulmonary and other system functions, and includes all of the following:

(a) Direct and indirect pulmonary care services that are safe, aseptic, preventative, and restorative to the patient. . .

(c) Observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and **diagnostic testing** and (1) **determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics;** (2) implementation based on observed abnormalities of appropriate reporting or referral or respiratory care protocols, or changes in treatment regimen, pursuant to a prescription by a physician and surgeon or the initiation of emergency procedures.

(d) The diagnostic and therapeutic use of any of the following, **in accordance with the prescription of a physician and surgeon:....diagnostic and testing techniques required for implementation of respiratory care protocols. . .**

1 (e) **Respiratory care protocols** as used in this section means policies and
2 protocols **developed by a licensed health care facility** through collaboration,
3 when appropriate, with administrators, physicians and surgeons, registered nurses,
4 physical therapists, respiratory care practitioners, and other licensed health care
5 practitioners.” (emphasis added.)

6 30. Section 3703 (b) states:

7 “The practice of respiratory care shall be performed **under the supervision of a**
8 **medical director in accordance with a prescription of a physician and**
9 **surgeon** or pursuant to respiratory care protocols as specified in Section 3702.”
10 (emphasis added.)

11 31. Section 3760 states in part as follows:

12 “(a) Except as otherwise provided in this chapter, no person shall engage in the
13 practice of respiratory care, respiratory therapy, or inhalation therapy. For
14 purposes of this section, **engaging in the practice of respiratory care includes,**
15 **but is not limited to, representations by a person whether through verbal**
16 **claim, sign, advertisement, letterhead, business card, or other representation**
17 **that he or she is able to perform any respiratory care service, or performance**
18 **of any respiratory care service.**

19 “(b) **No person who is unlicensed. . . shall engage in the practice of**
20 **respiratory care. . . .**” (emphasis added.)

21 Unlicensed Medical Practice

22 32. Section 2038 defines “**diagnosis**” as including:

23 “any undertaking by any method, device, or procedure whatsoever, and whether
24 gratuitous or not, to ascertain or establish whether a person is suffering from any
25 physical or mental disorder. Such terms shall also include **the taking of a**
26 **person’s blood pressure and the use of mechanical devices or machines for**
27 **the purpose of making a diagnosis and representing to such person any**
conclusion regarding his or her physical or mental condition. . . .” (emphasis
added.)

33. Section 2052 states:

“ Any person who practices or attempts to practice, or who advertises or holds
himself or herself out as practicing, any system or mode of treating the sick or
afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any
ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other
physical or mental condition of any person, without having at the time of so doing
a valid, unrevoked , or unsuspended certificate as provided in this chapter, or
without being authorized to perform such act pursuant to a certificate obtained in
accordance with some other provision of law, is guilty of a misdemeanor.”

Dangerous Drugs

34. Section 4022, as added in 1996, defines a "dangerous drug", in part, as any drug that, by federal or state law, can be lawfully dispensed only on prescription.

35. Section 2238 states that:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

36. Section 2242 states in part as follows:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without a good faith prior examination and medical indication therefor, constitutes unprofessional conduct."

Inadequate and/or False Records

37. Section 2266 states that "[t]he failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

38. Section 2261 provides that, "the making or signing of any certificate or other document directly or indirectly related to the practice of medicine which falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct."

39. Section 2262 states in part that "creating any false medical record, with fraudulent intent, constitutes unprofessional conduct."

Violation of Professional Confidence

40. Section 2263 provides that, "any willful, unauthorized violation of professional confidence shall constitute unprofessional conduct."

Unlicensed Practice

41. Section 2264 states:

"The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the practice of medicine or any other mode of treating the sick or afflicted which requires a license to practice, constitutes unprofessional conduct."

42. Section 2286 provides as follows:

“It shall constitute unprofessional conduct for any licensee to violate, to attempt to violate, directly or indirectly, to assist in or abet the violation of, or to conspire to violate any provision or term of Article 18 (commencing with Section 2400), of the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), or of any rules and regulations adopted under those laws.”

Medical Corporation

43. Section 2400 provides in relevant part that “Corporations and other artificial legal entities shall have no professional rights, privileges, or powers.”

44. Section 2402 provides in part that:

“The provisions of Section 2400 do not apply to a medical . . . corporation practicing pursuant to the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code) and this article, when such corporation is in compliance with the requirements of these statutes and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporations and the conduct of their affairs.”

45. Section 2406 provides in part that:

“A medical corporation . . . is a corporation which is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, so long as that corporation and its shareholders, officers, directors and employees rendering professional services who are physicians, psychologists, registered nurses, optometrists, podiatrists or, in the case of a medical corporation only, physician assistants, are in compliance with the Moscone-Knox Professional Corporation Act, the provisions of this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to such corporation and the conduct of its affairs.
With respect to a medical corporation or podiatry corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Division of Licensing.”

46. Section 2408 states in part that, “Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each shareholder, director and officer of a medical . . . corporation . . . shall be a licensed person as defined in Section 13401 of the Corporations Code.”

1 47. Section 2410 provides that:

2 "A medical . . . corporation shall not do or fail to do any act the doing of which or
3 the failure to do, which would constitute unprofessional conduct under any statute
4 or regulation now or hereafter in effect. In the conduct of its practice, it shall
observe and be bound by such statutes and regulations to the same extent as a
licensee under this chapter."

5 **Fictitious Name Permit Requirements**

6 48. Section 2415 provides in part that:

7 "(a) Any physician and surgeon . . . who as a sole proprietor, or in a partnership,
8 group, or professional corporation, desires to practice under any name that would
otherwise be a violation of Section 2285 may practice under that name if the
9 proprietor, partnership, group, or corporation obtains and maintains in current
status a fictitious name permit issued by the Division of Licensing"

10 "(b) The division or the board shall issue a fictitious name permit authorizing the
11 holder thereof to use the name specified in the permit in connection with his, her,
or its practice if the division or the board finds to its satisfaction that:

12 **(1) The applicant or applicants or shareholders of the professional**
13 **corporation hold valid and current licenses as physicians and surgeons or**
14 **podiatrists, as the case may be.**

15 **(2) The professional practice of the applicant or applicants is wholly**
16 **owned and entirely controlled by the applicant or applicants."**

17 **Records of Acquisition or Disposition of Dangerous Drugs**

18 49. Section 4081, from 1996 until July 1, 2001, provided, in part, that:

19 "All records of manufacture and of sale, acquisition, or disposition of dangerous
20 drugs or dangerous devices shall be at all times during business hours open to
inspection by authorized officers of the law, and shall be preserved for at least
three years from the date of making. **A current inventory shall be kept by**
21 **every . . . physician . . . who maintains a stock of dangerous drugs or**
22 **dangerous devices."** (emphasis added.)

23 50. Section 4170 provides, in part, that:

24 **"(a) No prescriber shall dispense drugs or dangerous devices to patients in his**
25 **or her office or place of practice unless all of the following conditions are**
26 **met:**

27 **(1) The dangerous drugs . . . are dispensed to the prescriber's own patient and . . .**
are not furnished by a nurse or attendant.

(2) The dangerous drugs . . . are necessary in the treatment of the condition for
which the prescriber is attending the patient. . .

(4) The prescriber fulfills all of the labeling requirements imposed upon
pharmacists by Section 4076, all of the recordkeeping requirements of this
chapter, and all of the packaging requirements of good pharmaceutical practice
. . .

1 (c) "Prescriber," as used in this section, means a person, who holds a
2 physician's and surgeon's certificate . . . and who is duly registered as such by
3 the Medical Board of California" (emphasis added.)

4 **Unfair Business Practices/False or Misleading Advertising**

5 51. Section 17200 provides as follows:

6 "As used in this chapter, unfair competition shall mean and include any unlawful,
7 unfair or fraudulent business act or practice and unfair, deceptive, untrue or
8 misleading advertising and any act prohibited by Chapter 1 (commencing with
9 Section 17500) of Part 3 of Division 7 of the Business and Professions Code."

10 52. Section 17500 states:

11 "It is unlawful for any person, firm, corporation or association, or any employee
12 thereof with the intent directly or indirectly to...perform services, professional or
13 otherwise, or anything of any nature whatsoever or to induce the public to enter
14 into any obligation relating thereto, to make or disseminate or cause to be made or
15 disseminated before the public in this state, or to make or disseminate or cause to
16 be made or disseminated from this state before the public in any state, in any
17 newspaper or other publication, or any advertising device, or by public outcry or
18 proclamation, or in any other manner or means whatever, any statement,
19 concerning ...services, professional or otherwise, or concerning any circumstance
20 or matter of fact connected with the proposed performance or disposition thereof,
21 which is untrue or misleading, and which is known, or which by the exercise of
22 reasonable care should be known, to be untrue or misleading...Any violation of
23 the provision of this section is a misdemeanor punishable by imprisonment in the
24 county jail not exceeding six months, or by a fine not exceeding two thousand five
25 hundred dollars(\$2,500), or by both."

26 **CORPORATIONS CODE: Medical Corporations**

27 53. Corporations Code section 13401(a)(b)(d) provides, in part, that:

"(a) "Professional services" means any type of professional services which may
be lawfully rendered only pursuant to a license, certification, or registration
authorized by the Business and Professions Code or the Chiropractic Act.

(b) "Professional corporation" means a corporation . . . which is engaged in
rendering professional services in a single profession, except as otherwise
authorized in Section 13401.5, pursuant to a certificate of registration issued by
the governmental agency regulating the profession as herein provided and which
in its practice or business designates itself as a professional or other corporation as
may be required by statute. However, any professional corporation or foreign
professional corporation rendering professional services by persons duly licensed
by the Medical Board of California or any examining committee under the
jurisdiction of the board . . . shall not be required to obtain a certificate of
registration in order to render those professional services.

(d) "Licensed person" means any natural person who is duly licensed under the
provisions of the Business and Professions Code . . . to render the same
professional services as are or will be rendered by the professional corporation or

1 foreign professional corporation of which he or she is or intends to become, an
2 officer, director, shareholder, or employee."

3 54. Corporations Code section 13401.5 provides, in part, that a licensed
4 physician must own a majority of shares in a medical corporation as follows:

5 "Notwithstanding subdivision (c) of section 13401 and any other provision of law,
6 the following licensed persons may be shareholders, officers, directors, or
7 professional employees of the professional corporations designated in this section
8 so long as the sum of all shares owned by such persons shall not exceed 49
9 percent of the total number of shares of the professional corporation so designated
10 herein

11 (a) Medical corporation.

- 12 (1) Licensed podiatrists.
- 13 (2) Licensed psychologists.
- 14 (3) Registered nurses.
- 15 (4) Licensed optometrists.
- 16 (5) Licensed marriage, family and child counselors.
- 17 (6) Licensed clinical and social workers.
- 18 (7) Licensed physicians' assistants.
- 19 (8) Licensed chiropractors."

20 55. Corporations Code section 13404 provides:

21 "A corporation may be formed under the General Corporation Law or pursuant to
22 subdivision (b) of Section 13406 for the purposes of qualifying as a professional
23 corporation in the manner provided in this part and rendering professional
24 services. The articles of incorporation of a professional corporation shall contain
25 a specific statement that the corporation is a professional corporation within the
26 meaning of this part. Except as provided in subdivision (b) of Section 13401, no
27 professional corporation shall render professional services in this state without a
currently effective certificate of registration issued by the governmental agency
regulating the profession in which such corporation is or proposes to be engaged,
pursuant to the applicable provisions of the Business and Professions Code or the
Chiropractic Act expressly authorizing such professional services to be rendered
by a professional corporation."

56. Corporations Code section 13406 provides in relevant part that:

"(a) Subject to the provisions of subdivision (b), shares of capital stock in a
professional corporation may be issued only to a licensed person or to a person
who is licensed to render the same professional services in the jurisdiction or
jurisdictions in which the person practices, and any shares issued in violation of
this restriction shall be void"

57. Corporation Code section 13408.5 provides:

"No professional corporation may be formed so as to cause any violation of law,
or any applicable rules and regulations, relating to fee splitting, kickbacks, or
other similar practices by physicians and surgeons or psychologists, including, but

not limited to, Section 650 or subdivision (3) of Section 2960 of the Business and Professions Code. A violation of any such provisions shall be grounds for the suspension or revocation of the certificate of registration of the professional corporation. The Commissioner of Corporations may refer any suspected violation of such provisions to the governmental agency regulating the profession in which the corporation is, or proposed to be engaged."

58. Corporation Code section 13410(a) provides in part that:

"(a) A professional corporation or a foreign professional corporation qualified to render professional services in this state shall be subject to the applicable rules and regulations adopted by, and all the disciplinary provisions of the Business and Professions Code expressly governing the practice of the profession in this state, and to the powers of, the governmental agency regulating the profession in which such corporation is engaged. Nothing in this part shall affect or impair the disciplinary powers of any such governmental agency over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person furnishing professional services and the person receiving such services."

HEALTH & SAFETY CODE: Emergency Medical Technicians (EMTs)

59. Health and Safety Code Section 1798.200(c) states, in part, that an EMT-I, EMT-II, EMT-P, or Paramedic licensee or certificate holder may be subject to discipline and poses a threat to the public health and safety by "(10) Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification."

60. Health and Safety Code Section 1797.178 states:

"No person or organization shall provide advanced life support or limited advanced life support unless that person or organization is an authorized part of the emergency medical services system of the local EMS agency. . . ."

61. Health and Safety Code Section 1797.52 defines "advanced life support" as follows:

"[S]pecial services designated to provide definitive **prehospital emergency medical care**, including, but not limited to, cardiopulmonary resuscitation, cardiac monitoring, cardiac defibrillation, advanced airway management, intravenous therapy, administration of specified drugs and other medicinal preparations, and other specified techniques and procedures administered by authorized personnel **under the direct supervision of a base hospital as part of a local EMS system** at the scene of an emergency, during transport to an acute care hospital, during interfacility transfer, and while in the emergency department of an acute care hospital until the responsibility is assumed by the emergency or other medical staff of that hospital." (emphasis added.)

1 62. Health and Safety Code section 1798.200(c) provides, in part, that an
2 EMT-I, EMT-II, EMT-P, or Paramedic licensee or certificate holder may be subject to discipline
3 for being a threat to the public health and safety by: "(10) Functioning outside the supervision of
4 medical control in the field care system operating at the local level, except as authorized by any
5 other license or certification." (emphasis added.)

6 **LABOR CODE: Physician Reporting Requirements**

7 63. Labor Code section 3209.3(a) in part defines the term physician for
8 purposes of Workers Compensation reporting. The section states: "Physician includes physician
9 and surgeons holding an M.D. ... degree."

10 64. Labor Code section 6409 concerning reports of occupational injuries or
11 occupational illness by physicians states in relevant part that:

12 **"(a) Every physician as defined in section 3209.3 who attends any injured**
13 **employee shall file a complete report of every occupational injury, or**
14 **occupational illness to the employee with the employer, or if insured, with the**
15 **employer's insurer, on forms prescribed for that purpose by the Division of**
16 **Labor Statistics and Research. A portion of the form shall be completed by the**
17 **injured employee, if he or she is able to do so, describing how the injury or illness**
18 **occurred. . ."** (emphasis added.)

19 **WELFARE AND INSTITUTIONS CODE**

20 65. Welfare and Institutions Code section 14124.12 provides, in pertinent part,
21 that:

22 (b) No funds appropriated by this act may be expended to pay any Medi-Cal claim
23 for any surgical service or other invasive procedure performed on any Medi-Cal
24 beneficiary by a physician if that physician has been placed on probation due to a
25 disciplinary action of the Medical Board of California related to the performance
26 of that specific service or procedure on any patient, except in any case where the
27 Board makes a determination during its disciplinary process that there exist
 compelling circumstances that warrant continued Medi-Cal reimbursement during
 the probationary period."

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REGULATIONS

MEDICAL BOARD OF CALIFORNIA

66. Title 16 California Code of Regulations^{2/}, Section 1360 provides that for the purpose of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with section 475) of the code, an act "shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit in a manner consistent with the public health, safety or welfare." Such acts "shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

Fictitious Name Permit/Professional Corporation

67. Regulation section 1344 (b) states in pertinent part that:

"When the applicant uses any fictitious, false or assumed name or surname of one or more of the present, prospective or former shareholders, or any words or names in addition to those of the shareholders, it shall obtain a permit pursuant to section 2415 of the code (Business and Professions Code)..."

68. Regulation section 1347 (a) states in pertinent part as follows:

"A professional corporation may perform any act authorized in its articles of incorporation or bylaws so long as that act is not in conflict with or prohibited by the Medical Practice Act..."

Medical Assistant/Technical Supportive Services

69. Regulation section 1366 states in part as follows:

"(a) **A medical assistant** may perform additional technical supportive services such as those specified herein **provided that all of the following conditions are met:**

(1) Each technical supportive service is not prohibited by another provision of law, including Section 2069(c) of the code, or these regulations, and is a usual and customary part of the medical practice where the medical assistant is employed;

2. All references to regulations are to Title 16, California Administrative Code unless otherwise indicated.

(2) The supervising physician authorizes the medical assistant to perform the service and shall be responsible for the patient's treatment and care;

(3) The medical assistant has completed the training specified in Section 1366.2, 1366.3, and 1366.4 and has demonstrated competence in the performance of the service;

(4) A record shall be made in the patient chart or other record, including a computerized record, if any, of each technical supportive service performed by the medical assistant, indicating the name, initials or other identifier of the medical assistant, the date and time, a description of the service performed, and the name of the physician ...who gave the medical assistant patient specific authorization to perform the task or who authorized such performance under a patient-specific standing order.” . . .

(b) A medical assistant in accordance with the provisions of subsection(a) may perform additional technical supportive services such as the following:

(1) Administer medication orally...In every instance, prior to administration of medication by a medical assistant, a licensed physician...shall verify the correct medication and dosage. . .

(6) collect by non-invasive techniques, and preserve specimens for testing, including urine, sputum, semen and stool. . .

(10) Collect and record patient data including height, weight, temperature, pulse, respiration rate and blood pressure, and basic information about the presenting and previous conditions.

(11) Perform simple laboratory and screening tests customarily performed in a medical office.

(c) Nothing in this section prohibits the administration of first aid or cardiopulmonary resuscitation in an emergency. . .

(e) Nothing in these regulations shall be construed to modify the requirement that a licensed physician...be physically present in the treatment facility as required in Section 2069 of the code.” (emphasis added.)

70. Regulation section 1366.1 states:

“In order to administer medications by intramuscular, subcutaneous and intradermal injection, to perform skin tests, **or to perform venipuncture or skin puncture for the purpose of withdrawing blood, a medical assistant shall have completed the minimum training prescribed herein.** Training shall be for the duration required by the medical assistant to demonstrate **to the supervising physician...proficiency in the procedures to be performed as authorized by Sections 2069 or 2070 of the Code,** where applicable, but shall include no less than:

(a) Ten (10) clock hours of training in administering injections and performing skin tests, and/or

(b) Ten(10) clock hours of training in venipuncture and skin puncture for the purpose of withdrawing blood, and

(c) Satisfactory performance by the trainee of at least ten (10) each of intramuscular, subcutaneous, and intradermal injections and ten(10) skin tests, and/or at least ten(10) venipuncture and ten(10) skin punctures. . .

1 in: (e) Training in (a) through (d) above, shall include instruction and demonstration

- 2 (1) pertinent anatomy and physiology appropriate to the procedures;
3 (2) choice of equipment;
4 (3) proper technique including sterile technique;
5 (4) hazards and complications;
6 (5) patient care following treatment or tests;
7 (6) emergency procedures; and
8 (7) California law and regulations for medical assistants.” (emphasis
9 added.)

10 71. Regulation section 1366.2 states:

11 “Prior to performing any of the additional technical supportive services provided
12 in Section 1366, a medical assistant shall receive such training as, in the
13 judgement of the supervising physician...as referenced in Section 1366.3(a)(2), is
14 necessary to assure the medical assistant’s competence in performing that service
15 at the appropriate standard of care. Such training shall be administered pursuant to
16 either subsection (a) (1) or (a)(2) of Section 1366.3.”

17 72. Regulation section 1366.3 states in part that the training required in
18 sections 1366, 1366.1 or 1366.2 may be administered by a supervising physician provided that:

19 (b) “The supervising physician...shall certify in writing the place and the date such
20 training was administered, the content and duration of the training, and that the
21 medical assistant was observed by the certifying physician...to demonstrate
22 competence in the performance of each such task or service, and shall sign the
23 certification...”

24 SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD

25 73. Regulation Section 1399.154(b) defines and “audiology aide” as follows:

26 (b) “Audiology aide” means a person who

27 (1) assists or facilitates while an audiologist is evaluating the hearing of
individuals and/or is treating individuals with hearing disorders, and

(2) is registered by the supervisor with the board and the registration is
approved by the board. . .

(c) “**Supervisor**” means a licensed...audiologist who supervises an audiology
aide.”(emphasis added.)

74. Regulation Section 1399.154.1 provides for the registration of audiology
aides and states:

“Before allowing an aide to assist in the practice of ...audiology under his or her
supervision, a supervisor shall register each aide with the board...Regardless of
their title or job classification, any support person who functions as an...audiology
aide and facilitates or assists a supervisor in evaluations or treatment shall be
registered with the board...”

75. Regulation 1399.154.4 provides for the training of audiology aides and states, in part, as follows:

“Before...an audiologist allows an aide to assist in the practice of ...audiology under his or her supervision...**an audiology aide shall complete a training program established by the supervisor.** The training program shall include, but is not limited to:

(a) Instruction in the skills necessary to perform any acts or services which are the practice ...of audiology as defined in Section 2530.2 of the code...

(b) A supervisor shall require ...an audiology aide to demonstrate his or her competence to perform any acts or provide any services which are the practice of audiology as defined in Section 2530.2 of the code which may be assigned to the aide or which the aide may provide to patients. A supervisor shall allow ...an audiology aide only to perform those acts or to provide those services for which he or she has been provided training and has demonstrated competency.

(c) A supervisor shall instruct...an audiology aide as to the limitations imposed upon his or her duties, acts or services by these regulations, by his or her training and skills, and by the evaluation and treatment plan for any patient.

(d) In addition to the requirements of this section, an industrial audiology aide shall be provided training in the use of an audiometer and in the necessary techniques for obtaining valid and reliable audiograms.”(emphasis added.)

CAL/OSHA CONSTRUCTION SAFETY ORDERS
TITLE 8 CALIFORNIA CODE OF REGULATIONS^{3/}
Lead Exposure

76. Regulation section 1532.1 “Lead” provides for the monitoring of permissible exposure levels of employees to lead and states in part as follows:

“(b) Definitions.

“**Action Level** means employee exposure, without regard to the use of respirators, to an airborne concentration of lead of 30 micrograms per cubic meter of air calculated as an 8 hour time-weighted average(TWA).”

“**NIOSH** means the National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services, or designee.”

“(c)**Permissible exposure limit(PEL)**

(1) The employer shall assure that no employee is exposed to lead at concentrations greater than fifty micrograms per cubic meter of air averaged over an 8 hour period.

(d)**Exposure assessment**

(1)General

3. The following referenced regulations under this heading shall be to Title 8 California Code of Regulations unless otherwise indicated.

(A) Each employer who has a workplace or operation covered by this standard shall initially determine if any employee may be exposed to lead at or above the action level.

(B) For purpose of subsection (d), employee exposure is that exposure which would occur if the employee were not using a respirator.

(2) Protection of employees during assessment of exposure.

(A) With respect to the lead related tasks listed in subsection (d)(2)(A), where lead is present, until the employer performs an employee exposure assessment as required in subsection (d) and documents that the employee performing any of the listed tasks is not exposed above the PEL, the employer shall treat the employee as if the employee were exposed above the PEL, and not in excess of ten times the PEL, and shall implement employee protective measures prescribed in subsection (d)(2)(E)."

(E) Until the employer performs an employee exposure assessment as required under subsection (d) and determines actual employee exposure, the employer shall provide to employees performing the tasks described in subsections (d) (2) (A), (d) (2) (B), (d) (2) (C), and (d) (2) (D) with interim protection as follows:

1. Appropriate respiratory protection in accordance with subsection (f) . . .

5. Biological monitoring in accordance with subsection (j) (1) (A), to consist of blood sampling and analysis for lead and zinc protoporphyrin levels... "

(f) Respiratory Protection.

(1) General. For employees who use respirators required by this section, the employer must provide respirators that comply with the requirements of this subsection. . .

(2) Respirator program.

(A) An employer us implement a respiratory protections program . . .

(B) If an employee exhibits breathing difficulty during fit testing or respirator use, the employer must provide the employee with **a medical examination** in accordance with subsection (j)(3)(A)2. to determine if the employee can use a respirator while performing the required duties . . .

(j) Medical Surveillance

(1) General.

(A) The employer shall make available initial medical surveillance to employees occupationally exposed on any day to lead at or above the action level. Initial medical surveillance **consists of biological monitoring in the form of blood sampling and analysis for lead and zinc protoporphyrin levels.**

(B) The employer shall institute a medical surveillance program in accordance with subsections (j)(2) and (j)(3) for all employees who are or may be exposed by the employer at or above the action level for more than 30 days in any consecutive 12 months;

(C) The employer shall insure that all medical examinations and procedures are performed by or under the supervision of a licensed physician.

(2) Biological monitoring . . .

(A) Blood lead and ZPP level sampling and analysis. The employer shall make available biological monitoring in the form of blood sampling and analysis for lead and zinc protoporphyrin levels to each employee covered under subsections (j)(1)(A) on the following schedule.

(1) For each employee covered under subsection (j) (1)(B), at least every two months for the first six months and every six months thereafter;

2. For each employee covered under subsections (j)(1)(A) or (B) whose last blood sampling and analysis indicated a blood lead level at or above 40 micrograms per deciliter, at least every two months. This frequency shall continue until two

consecutive blood samples and analyses indicate a blood lead level below 40 micrograms per deciliter; and

3. For each employee who is removed from exposure to lead due to an elevated blood lead level at least monthly during the removal period.

(B) Follow-up blood sampling tests. Whenever the results of a blood lead level test indicate that an employee's blood lead level exceeds the numerical criterion for medical removal under subsection (k)(1)(A), the employer shall provide a second(follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.

(C) Accuracy of blood lead level sampling and analysis. Blood lead level sampling and analysis provided pursuant to this section shall have an accuracy(to a confidence level of 95 percent) within plus or minus 15 percent or 6micrograms per deciliter, whichever is greater, and shall be conducted by a laboratory approved by OSHA.

(3) Medical examinations and consultations.

(A) Frequency. The employer shall make available medical examinations and consultations to each employee covered under subsection (j)(1)(B) on the following schedule:

1. At least annually for each employee for whom a blood sampling test conducted at any time during the preceding 12 months indicated a blood lead level at or above 40 micrograms per deciliter;

2. As soon as possible, upon notification by an employee either that the employee has developed signs or symptoms commonly associated with lead intoxication, that the employee desires medical advice concerning the effects of current or past exposure to lead on the employee's ability to procreate a healthy child, that the employee has demonstrated difficulty in breathing during a respirator fitting test or during use;

3. **As medically appropriate for each employee** either removed from exposure to lead due to a risk of sustaining material impairment to health, or otherwise limited pursuant to a final medical determination.

(B) Content. The content of medical examinations made available pursuant to subsections (j)(3)(A)2.-3. **Shall be determined by an examining physician** and, if requested by an employee, shall include pregnancy testing or laboratory evaluation of male fertility. **Medical examinations** made available pursuant to subsection (j)(3)(A) 1. of this section **shall include the following elements:**

1. A detailed work history and a medical history, with particular attention to past lead exposure (occupational and non-occupational), personal habits (smoking, hygiene), and past gastrointestinal, hematological, renal, cardiovascular, reproductive and neurological problems;

2. A thorough physical examination, with particular attention to teeth, gums, hematological, gastrointestinal, renal, cardiovascular, and neurological systems.

Pulmonary status should be evaluated if respiratory protection will be used;

3. A blood pressure measurement;

4. A blood sample and analysis which determines:

a. Blood lead level;

b. Hemoglobin and hematocrit determinations, red cell indices, and examination of peripheral smear morphology;

c. Zinc protoporphyrin;

d. Blood urea nitrogen; and,

e. Serum creatinine;

5. A routine urinalysis with microscopic examination; and

6. Any laboratory or other test relevant to lead exposure which the examining physician deems necessary by sound medical practice. . .

(E) Written medical opinions.

1. The employer shall obtain and furnish the employee with a copy of a written medical opinion from each examining or consulting physician which contains only the following information:

- a. The physician's opinion as to whether the employee has any detected medical condition which would place the employee at increased risk of material impairment of the employee's health from the exposure to lead;
- b. Any recommended special protective measures to be provided to the employee, or limitations to be placed upon the employee's exposure to lead;
- c. Any recommended limitations upon the employee's use of respirators, including a determination of whether the employee can wear a powered air purifying respirator if a physician determines that the employee cannot wear a negative pressure respirator; and
- d. The results of the blood lead determinations.

2. The employer shall instruct each examining and consulting physician to:

- a. Not reveal either in the written opinion or orally, or in any other means of communication with the employer, findings, including laboratory results, or diagnoses unrelated to an employee's occupational exposure to lead; and
 - b. Advise the employee of any medical condition, occupational or nonoccupational, which dictates further medical examination or treatment."
- (emphasis added.)

Respiratory Protection

77. Regulation section 5144 "Respiratory protection" defines in subsection (b) "physician or other licensed health care professional (PLHCP) as "an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows him or her to independently provide, or be delegated the responsibility to provide, some or all of the health care services required by subsection (e)."

78. Regulation section 5144 "Respiratory protection" also specifies the type of medical evaluation to be completed:

"(D) For protection against particulates, the employer shall provide: . .

(e) Medical evaluation. Using a respirator may place a physiological burden on employees that varies with the type of respirator worn, the job and workplace conditions in which the respirator is used, and the medical status of the employee. Accordingly, this subsection specifies the minimum requirements for medical evaluation that the employers must implement to determine the employee's ability to use a respirator.

(1) General. The employer shall provide a medical evaluation to determine the employee's ability to use a respirator, before the employee is fit tested or required to use the respirator in the workplace . . .

(2) Medical evaluation procedures.

(A) The employer shall identify a physician or other licensed health care professional (PLHCP) to perform medical evaluations using a medical

questionnaire or an initial medical examination that obtains the same information as the medical questionnaire.

(B) The medical evaluation shall obtain the information requested by the questionnaire in Sections 1 and 2, Part A of Appendix C.

(3) Follow-up medical examination.

(A) The employer shall ensure that a follow-up medical evaluation is provided for an employee who gives a positive response to any of the questions 1 through 8 in Section 2, Part A of Appendix C or whose initial medical evaluation demonstrates the need for a follow-up medical examination.

(B) **The follow-up medical examination shall include any medical tests, consultations, or diagnostic procedures that the PLHCP deems necessary to make a final determination.**

(4) Administration of the medical questionnaire and examinations.

(A) **The medical questionnaire and examinations shall be administered confidentially** during the employee's normal working hours or at a time and place convenient to the employee. The medical questionnaire shall be administered in a manner that ensures that the employee understands its content . . .

(B) The employer shall provide the employee with an opportunity to discuss the questionnaire and examination results with the PLHCP . . .

(6) Medical determination. In determining the employee's ability to use a respirator, the employer shall:

(A) Obtain a written recommendation regarding the employee's ability to use the respirator from the PLHCP. The recommendation shall provide only the following information:

(1) Any limitations on respirator use related to the medical condition of the employee, or relating to the workplace conditions in which the respirator will be used, including whether or not the employee is medically able to use the respirator;

(2) The need, if any, for follow-up medical evaluations; and

(3) A statement that the PLHCP has provided the employee with a copy of the PLHCP's written recommendation . . . " (emphasis added.)

Hearing Protection/Noise Exposure

79. Title 8, Chapter 4, Regulation Section 5097 "Hearing Conservation Program" provides for monitoring of employee noise exposures. Subsection (c) "Audiometric Testing Program" provides for testing, in part, as follows:

"(3) Audiometric tests shall be performed by a licensed or certified audiologist, otolaryngologist, or other physician, or by a technician who is certified by the Council of Accreditation in Occupational Hearing Conservation, or who has satisfactorily demonstrated competence in audiometric examinations, obtaining valid audiograms, and properly using, maintaining and checking calibration and proper functioning of the audiometers being used. A technician who performs audiometric tests must be responsible to an audiologist, otolaryngologist or physician. . . " (emphasis added.)

Subsection (d) "Evaluation of Audiogram" states, in part:

"(3) An audiologist, otolaryngologist or physician shall review problem audiograms and shall determine whether there is a need for further evaluation."

PRE-HOSPITAL EMERGENCY MEDICAL SERVICES
TITLE 22 CALIFORNIA CODE OF REGULATIONS^{4/}

80. Regulation section 100063(a) governs the scope of practice of an Emergency Medical Technician I (EMT-I) and provides that a supervised EMT-I student or certified EMT-I is authorized to practice "(a) During training, while at the scene of an emergency, during transport of the sick or injured, or during interfacility transfer . . ."

81. Regulation section 100106 governs the scope of practice of an Emergency Medical Technician II (EMT-II) and states, in part, that in addition to performing any activity within the practice of an EMT-I:

"(b) A certified EMT-II or an EMT-II trainee, while caring for patients in a hospital as part of their training or continuing education **under the direct supervision of a physician** or registered nurse, or while at the scene of a medical emergency or during transport, or during interfacility transfer when medical direction is maintained by a physician or an authorized registered nurse and according to the policies and procedures approved by the local EMS Agency, may

"(f) The scope of practice of an EMT-II shall not exceed those activities authorized in this section unless specifically approved in accordance with the provisions of subsection (b)(10) of this section."

CODE OF ETHICS

82. In 1980, the American Medical Association adopted a 1980 revision of the AMA Principles of Medical Ethics, which embodies basic principles of conduct by the profession.

83. Section 2 of the American Medical Association's Principles of Medical Ethics states that: "A physician shall deal honestly with patients and colleagues, and strive to expose those physicians deficient in character or competence, or who engage in fraud or deception."

4. The following referenced regulations under this heading shall be to Title 22 California Code of Regulations unless otherwise indicated.

1 84. Section 3 of the American Medical Association's Principles of Medical
2 Ethics states as follows:

3 “A physician shall respect the law and also recognize a responsibility to seek
4 changes in those requirements which are contrary to the best interests of the patient.”

5 **DANGEROUS DRUGS INVOLVED**

6 85. Hepatitis A vaccine (Harvix A) is a dangerous drug as defined in Business
7 and Professions Code section 4022.

8 86. Hepatitis B vaccine (Recombivax-HB; Engerix-B) is a dangerous drug as
9 defined in Business and Professions Code section 4022.

10 87. Tetramune (Diphtheria-Tetanus-Pertusis(DPT) and (HIB)) is a dangerous
11 drug as defined in Business and Professions Code section 4022.

12 88. DTP(Diphtheria-Tetanus-Pertusis) vaccine is a dangerous drug as defined
13 in Business and Professions Code section 4022.

14 89. DTAP (Diphtheria-Tetanus-Acellular Pertussis) vaccine is a dangerous
15 drug as defined in Business and Professions Code section 4022.

16 90. IPV (Injectable Polio Vaccine) is a dangerous drug as defined in Business
17 and Professions Code section 4022.

18 91. Typhoid (Typhim Vi; Typhoid Vi Polysaccharide Vaccine) is a dangerous
19 drug as defined in Business and Professions Code section 4022.

20 92. Influenza Virus Vaccine (Trivalent, types A and B; Fluogen; FluShield;
21 Fluzone (zonal Purified, Subvirion;1999-2000 Formula) is a dangerous drug as defined in
22 Business and Professions Code section 4022.

23 93. Tuberculin Skin Test (PPD Tine Test; Old Tine Test) is a dangerous drug
24 as defined in Business and Professions Code section 4022.

25 94. Pontocaine is a trade name for tetracaine hydrochloride and is an
26 anesthetic generally used to produce spinal anesthesia. It is a dangerous drug as defined in
27 Business and Professions Code section 4022.

1 95. Alcaine is a trade name for proparacaine hydrochloride and is a dangerous
2 drug as defined in Business and Professions Code section 4022.

3 96. Paracaine Hydrochloride ophthalmic is a dangerous drug as defined in
4 Business and Professions Code section 4022.

5 97. Epinephrine is a dangerous drug as defined in Business and Professions
6 Code section 4022.

7 **FACTUAL ALLEGATIONS**

8 98. Respondent's conduct, as alleged in this Accusation, occurred while he
9 was a California licensed physician and a contract physician and/or independent contractor for
10 Industrial Safety & Health , Inc., sometimes doing business as Industrial On-Site Medics.

11 **Industrial Safety & Health, Inc./Industrial On-Site Medics**

12 99. On February 22, 1999, State of California Articles of Incorporation were
13 filed with the Secretary of State for a newly formed corporation called **INDUSTRIAL SAFETY**
14 **& HEALTH, INC.** The Articles of Incorporation listed **Virginia Siegel** and **Zulema Garcia** as
15 the initial directors of the corporation. The Articles of Incorporation did not include any
16 statement that the corporation is a professional corporation within the meaning of the Moscone-
17 Knox Professional Corporation Act, Corporate Code section 13400, et seq. The Articles of
18 Incorporation also listed the addresses of the two listed initial directors of the corporation as 5100
19 Clayton Road, # 326, Concord, CA 94521.

20 100. On or about May 10, 1999, a STATEMENT BY DOMESTIC STOCK
21 CORPORATION was filed on behalf of INDUSTRIAL SAFETY & HEALTH, INC. with the
22 Secretary of State's office. This STATEMENT listed Zulema Garcia as the Chief Executive
23 Officer and Virginia Siegel as the corporation's secretary. The STATEMENT also indicated that
24 both Zulema Garcia and Virginia Siegel were corporation directors and that there were no
25 director vacancies. The STATEMENT listed the type of business of the corporation as "ON-
26 SITE INDUSTRIAL/COMMERCIAL HEALTH AND SAFETY SERVICES".

1 101. On or about March 28, 1996 a FICTITIOUS BUSINESS NAME
2 STATEMENT was filed in Contra Costa County for Industrial Health and Safety. The owners of
3 the business were listed as: Virginia Siegel; Jeffrey Feuerstein; Charles H. Godtfredsen; and
4 Zulema Garcia. The business was declared to be a partnership, and the statement was signed by
5 Zulema Garcia.

6 102. On or about June 3, 1997 a FICTITIOUS BUSINESS NAME
7 STATEMENT was filed in Contra Costa County for Industrial Health and Safety. The owners of
8 the business as listed on the statement were: Virginia Siegel; Zulema Garcia; and Jeffrey Morino.
9 The business was declared to be a general partnership, and the statement was signed by Zulema
10 Garcia.

11 103. On or about November 5, 1997 a FICTITIOUS BUSINESS NAME
12 STATEMENT was filed in Contra Costa County for Industrial On-Site Medics. The ownership
13 as listed on the statement is: Virginia Siegel and Zulema Garcia. The statement declared that the
14 business was a general partnership and the statement was signed by Zulema Garcia.

15 104. On or about December 21, 1999 Industrial On-Site Medics had a web site
16 that advertised that it provided "medical services provided by medical personnel, respirator
17 physicals and fits, vaccinations, lead monitoring etc."

18 105. On or about December 20, 1999 Ms Siegel was interviewed by
19 investigators and stated that **Industrial Safety and Health, Inc. ("ISH")** was incorporated in
20 February 1999 with two owners, herself and Zulema Garcia, each owning 50% of the stock. The
21 business of the corporation is done in the name of **Industrial On-Site Medics ("IOSM")**.
22 Previously, the business was organized as a general partnership in the name of Industrial Health
23 and Safety. Although they had a few additional partners earlier, immediately prior to
24 incorporating, the partners were herself and Zulema Garcia.

25 106. Ms. Siegel described the business of ISH through Industrial On-Site
26 Medics as providing Occupational Safety and Health Act ("OSHA")-mandated medical and
27 safety services to contractors/employers. It provides these services by bringing the services out to

1 the industrial sites, thereby saving the employer money by avoiding having to send its employees
2 off site. Ms. Siegel is Director of Sales and Marketing. She has training as a paramedic and is
3 certified in both Alameda and Contra Costa Counties. Ms. Siegel has no other licenses relating to
4 the medical field. She stated that she understood that for the time she is not working as a
5 paramedic for the county, that her license does not permit her to work as a paramedic outside the
6 county system. Ms. Siegel also does first aid training for her employees. She is not certified to
7 teach first aid by either the Red Cross or any other association. She has a certificate from the
8 American Heart Association as a CPR instructor.

9 107. Ms. Siegel stated that her partner, Zulema Garcia, is Director of
10 Operations, but also performs some patient exams and is completely in charge of drug testing.
11 Ms. Garcia does not have any medical licenses or State-issued certificates in the medical field.

12 108. Ms. Siegel stated that respondent "Hugh Wang" is the corporation's
13 physician. He is not an employee but an independent contractor who is compensated on a fee for
14 service basis and the corporation pays him monthly based upon the amount of work he does.
15 According to Ms. Siegel, Dr. Wang does not see any patients other than in the unusual instance
16 when "we" would send an injured employee to his private office if the injury sustained could not
17 be dealt with as first-aid by ISH personnel and the employer/employee had no other doctor. She
18 stated that " **We are supervised by Dr. Wang and it is his license that we function under.**
19 **Although my training is as a Paramedic, my authority to offer the ISH services comes from**
20 **Dr. Wang.**"

21 109. During her interview, Ms. Siegel also admitted that she had personally
22 developed the title of **Occupational Health Technician (OHT)** to define the work of the ISH
23 employees, and that she established the training requirements to be met by employees before she
24 will issue a certificate as an OHT. Although Ms. Siegel prints up the certificate, respondent Dr.
25 Wang signs each certificate for the ISH personnel and that certificate is what allows ISH
26 employees to operate under Dr. Wang's supervision.

1 110. Ms. Siegel revealed that respondent Dr. Wang does training for the ISH
2 personnel. For example, she said that he has instructed employees on how to do range of motion
3 and dipstick urinalysis, and established guidelines that he wants employees to highlight for him
4 such as a blood pressure over 160/100. Ms. Siegel stated that she was unaware of respondent Dr.
5 Wang's training and background.

6 111. During her interview, Ms. Siegel also described the services provided by
7 her business and employees. According to Ms. Siegel, ISH has 117 contractors for whom they
8 provide services, over an area ranging from San Jose up to Santa Rosa and inland to Sacramento.
9 ISH operates in the counties of Solano, Contra Costa, Alameda, Sacramento, Santa Rosa, Santa
10 Clara, and San Joaquin. The services provided by ISH include responding to first-aid level
11 injuries. ISH personnel will evaluate the person and decide whether they can be treated with
12 first-aid or inform the employer that the person needs to see a physician. The employer's policy
13 may be that injured employees go to a specific clinic, an emergency room, or their own doctor. If
14 they do not have a physician, ISH can refer the employee to the office of respondent Dr. Wang to
15 be treated as one of his private patients.

16 112. Ms. Siegel also revealed that ISH personnel perform audiograms. ISH
17 personnel received their training on how to perform audiograms from the company sales
18 representative. The machine prints out the results, which respondent Dr. Wang reviews, and then
19 "we" send the results back to the employer. In addition, ISH personnel perform pulmonary
20 function tests (spirometry). According to Ms. Siegel, ISH personnel receive training from a
21 company representative. She is aware that the rules say the testing is to be done by a person who
22 has completed a NIOSH (National Institute of Occupational Safety and Health) course or a
23 technician functioning under the authority of a physician. Ms. Siegel asserts that ISH personnel
24 function under the authority of Dr. Wang.

25 113. Ms. Siegel further revealed that ISH personnel do blood draws to test for
26 blood lead levels and other testing. She stated that these blood draws are done under the
27 authority of Dr. Wang. No employee at ISH is a certified phlebotomist. ISH personnel also

1 perform medical exams as described in the OSHA standard which are required after the
2 laboratory results show blood lead levels elevated above a certain amount. Ms. Siegel stated that
3 the medical exams performed by ISH personnel are approved by Dr. Wang.

4 114. On or about January 5, 2000, Ms. Zulema Garcia was interviewed by
5 Medical Board investigators. Ms. Garcia explained how the vaccines administered by ISH
6 personnel were ordered and paid for. Ms. Garcia indicated that the vaccines are shipped by the
7 supplier to the ISH's mailing address of 5100-1B Clayton Road, # 326, which is the local office
8 for mailboxes. According to Ms. Garcia, the invoices show the name of respondent Hugh H.
9 Wang, M.D. for that address, but the drugs are ordered and paid for by ISH.

10 115. Ms. Garcia stated that her business with Ms. Siegel began as a partnership,
11 called Industrial Health and Safety, and that they did business in the name of Industrial On-Site
12 Medics. About a year ago when they incorporated, Ms. Garcia stated that they requested the
13 name of Industrial Health and Safety but it was already taken. Therefore, for the last year, their
14 official name has been "Industrial Safety and Health, Inc.", and they use the name Industrial On-
15 Site Medics.

16 116. Ms. Garcia stated that when vaccinations were administered by ISH
17 personnel, that they had "employees sign a sheet for the site on a day they received their
18 inoculations and that on the old forms one could not determine the identity of the person giving
19 the shots."

20 117. Ms. Garcia also informed the investigators that, for blood lead level
21 testing, she and Ms. Siegel sent the samples to one of the following laboratories: "ARUP
22 Laboratories in Utah; to the labs of Quest Diagnostics; SmithKline Beecham; Northwest Drug
23 Testing; and Lab One."

24 118. Ms. Garcia also gave the investigators a copy of a 1999/2000 vaccination
25 questionnaire for a flu shot. She informed the investigators that if the person answers "yes" to
26 any of the questions numbered 2 through 7, "we are not to give the shot." If the person answers
27

1 "yes" to question number 1 about being 50 years of age or older, "we give the shot but Dr. Wang
2 does not want us to give the shot to geriatric people."

3 119. Ms. Garcia also described for the investigators the procedure used by ISH
4 employees for transporting vaccination vials. She stated that, "the vaccination vials are kept in an
5 unlocked refrigerator and, each time they go on-site to give inoculations, the technician takes the
6 needed vials out of the refrigerator and places them in an ice-packed cooler for transport. The
7 technician also returns any unused vials and places them back in the unlocked refrigerator."

8 120. An inventory was taken on January 5, 2000 of the contents of the ISH
9 refrigerator and it contained the following dangerous drugs:

- 10 1. Fluogen #10 5ml;
- 11 2. Hepatitis B vaccine 20mcg/ml, 3 boxes;
- 12 3. Influenza Virus-Type A, 2 vials, 5ml, and two vials open;
- 13 4. Tetanus-3;
- 14 5. Hepatitis A-1;
- 15 6. TB-5tu, 2;
- 16 7. Influenza Virus waded syringe-7;
- 17 8. Hepatitis A loaded syringe-5;
- 18 9. Epinephrine-2 vials;
- 19 10. 10 ml calcium gluconate-17;
- 20 11. Polio oral-15;
- 21 12. Pontocaine 15ml-2;
- 22 13. Alcaine 15ml-2;
- 23 14. Proparacaine Hydrochloride Ophthalmic 15ml-5.

24 121. In addition, on January 5, 2000, the following syringes and needles were
25 inventoried and confiscated by the investigators from ISH:

- 26 1. 27½ g 1ml latex Free Syringe, 54;
- 27 2. 3cc 23g x1 safety glide Im needles, 33;
- 28 3. 23g x1 safety glide Im needles, 3;
- 29 4. Vaccutaines 21g x1 (green coded), 158
- 30 5. Vaccutaines 22g x1 (coded black), 61;
- 31 6. 23g 3/4 Vaccutaines safety lock blood (collection sets 5x50 boxed, 1x43), 294;
- 32 7. 23 gauge needles, 36.

33 122. On December 20, 1999, Dr. Wang was interviewed by a Medical Board
34 investigator and a Medical Board physician consultant. Dr. Wang stated that he is the Medical
35 Director of Industrial On-Site Medics (IOSM) and that he has been associated with them since
36 1997 or 1998. He is an independent contractor and not an employee. Virginia Siegel is one of the
37

1 owners. His duties include being a medical administrator and he has no patient contact. He signs
2 off on forms; helps train personnel; reviews paperwork; signs pre-employment physical exam
3 forms; reviews pulmonary function tests and audiograms; reviews laboratory test results, such as
4 drug screens, and certifies them when they are positive; and conducts annual training of newly
5 hired employees.

6 123. Dr. Wang described the employees of Ms. Siegel as "industrial
7 technicians." He also stated that he believes that the people Ms. Siegel hires have been
8 "previously trained as emergency technicians and that they therefore are better trained than other
9 industrial technicians." Dr. Wang described his training of these employees as, "reviewing how
10 to do a physical exam, reviewing first aid, and discussing his philosophy of care." He stated that
11 he also informs all technicians that he "reviews all the paper work that they submit." According
12 to Dr. Wang, the technicians duties include, "administering first aid, drawing blood, taking urine
13 samples, performing audiograms, and administering pulmonary function tests." He admitted,
14 however, that when he reviews the paperwork submitted by the technicians that he does not know
15 which technician administered the tests. He also admitted that he does not perform a review of
16 systems on the workers who are tested for lead exposure.

17 124. On or about February 29, 2000, Michael McBride, an employee of ISH
18 and/or Industrial On-Site Medics, was interviewed by an investigator from the Emergency
19 Medical Services Authority of the State of California. During the interview Mr. McBride stated
20 that, when he is working for Industrial On-Site Medics, he is not functioning as "a Paramedic but
21 rather as an Occupational Health Technician (OHT)." Mr. McBride also stated his duties as an
22 OHT include "doing basic assessments, audiograms, pre-employment physicals and drug test
23 collections from urine and breath." Mr. McBride also admitted at the interview that he had
24 "given inoculations such as flu and tetanus injections while under the employ of Industrial On-
25 Site Medics." Mr. McBride, when asked whether he performs blood lead level testing, stated that
26 "in the past he has withdrawn blood from a patient for the purposes of a test." When asked
27 whether he performs hearing tests or respirator fit checks he stated that "he performs fit checking,

1 also known as pulmonary function testing. That he completes the OSHA-mandated questions for
2 the patient's history, smoking, lifestyle, medications, lung sounds, blood pressure, pulse and
3 respirations. The patient then blows into the tube or spirometer for testing." When asked what
4 training he received to perform these tests he stated that he received training from "Virginia
5 Siegel, Zulema Garcia, and Dr. Wang." When asked if he performs audiograms, or hearing tests,
6 he stated that "he performs audiograms in a quiet environment if available." When asked if a
7 factory or refinery is quiet enough to perform an audiogram he responded by stating, "You just try
8 to find the best environment." When asked what kind of assessment training and experience he
9 has to assess a patient, he stated "the in-house training from Virginia Siegel and his EMT
10 Paramedic experience." He also stated that "Dr. Wang has never made a personal appearance for
11 training."

12 125. On or about October 15, 1999 Virginia Siegel submitted a proposal to
13 Dillingham Construction regarding retaining of Industrial On-Site Medics to in part provide
14 "Paramedics trained as Occupational Health Technicians" . . . to provide "Respirator fits and
15 medical clearance. Our safety personnel may also do fits and medical exams as time permits . . ."

16 126. On or about October 28, 1999 James E. Cone, M.D., M.P.H., Chief,
17 Occupational Health Branch for the State of California, Department of Health Services, wrote to
18 the Medical Board indicating, in part, that a nurse practitioner from the Prevention Occupational
19 Lead Poisoning Program had interviewed Ms. Virginia Siegel regarding the activities of
20 Industrial On-Site Medics. The letter indicated in part that, "Industrial On-Site Medics'
21 Occupational Health Technicians go to the job site in a converted ambulance, perform the
22 evaluations and bring the information back to Dr. Wang who then makes his determinations."
23 The letter further indicated that Ms. Siegel stated that the scope of services provided include
24 injury care; pre-employment physical exams; medical surveillance exams and blood lead
25 monitoring; phlebotomy; medical clearance for respirator use including spirometry; audiometry,
26 and drug screens." Ms. Siegel also stated, according to the letter, that "OHT's are trained
27 personnel working under a licensed physician. Her analogy was a medical assistant working in a

1 clinic." In addition, Ms. Siegel admitted that "neither the curriculum nor the certifications are
2 state approved; rather it is a private certification." Furthermore she stated that "The OHT's do
3 not attend a National Institute for Occupational Safety and Health (NIOSH) Certified Program for
4 performing spirometry and audiometry."

5 Ms. Siegel stated in the interview with the nurse practitioner that she was
6 "familiar with the Doctor's First Report (DFR) and that Dr. Wang would be reviewing the results
7 and completing the DFR."

8 127. On or about February 1, 2000, Zulema Garcia, Mary Welton, Sergio Lara,
9 and Megan Mihon took the ASPT National Phlebotomy Exam.

10 128. On or about February 22, 2000, an investigator for the Emergency Medical
11 Services Authority received a document which lists Industrial On-Site Medic's (IOSM's) client
12 list and the services they provide to each client. According to that list, the clients and the services
13 provided are as follows:

14 (1) Bigge Crane	Pulmonary Function Tests, Respirator fits
15 (2) Interstate Scaffold	Pulmonary Function Tests, Respirator fits
16 (3) North Bay Sandblasting	Pulmonary Function Tests, Blood lead draw
17 (4) Mowat Const.	Pre-Employment Physicals, Training
18 (5) DISA Inc.	Drug Collections
19 (6) Redwood Painting	Pulmonary Function Tests, Respirator fits Audios, etc.
20 (7) GSI of Ca., Inc.	Pulmonary Function Tests, Respirator fits
21 (8) Performance Mechanical	Pulmonary Function Tests, Respirator fits
22 (9) Babcock & Wilcox	Pulmonary Function Tests, Respirator fits

1 129. On or about May 8, 2000, two Medical Board investigators interviewed
2 Mr. David Snyder, Senior Project Superintendent for Dillingham Construction. Mr. Snyder was
3 asked what services were provided by Industrial On-Site Medics. He stated, in part, that "Many
4 people were processed for employment to use respirators in February 2000 . . . all processing was
5 handled on our site by Industrial On-Site Medics, including completion of the medical
6 questionnaire, blood pressure, heart rate, etc. They did the pulmonary function tests and take all
7 the information and send it to their doctor for verification. We thought there was a Dr. Wong
8 (phonetic) but he never came here."

9 130. On or about May 16, 2000, two Medical Board investigators interviewed
10 Stacy Nolen of Christie Constructors at the Carquinez Bridge work site. Also present were Carl
11 James, Project Manager, and W. Bourke Harris, President. The investigators were informed in
12 part at this meeting that their blood lead level testing is done by Industrial On-Site Medics.
13 Industrial On-Site Medics also does the required pulmonary function tests and respiratory fit tests.
14 There has been no change or difference of which they are aware after March 7, 2000. No doctor
15 comes to their job site. They believe that the people of Industrial On-Site Medics are
16 phlebotomists, but they have never seen any reason to ask to see any certification of this.

17 131. On or about May 19, 2000, two Medical Board investigators interviewed
18 Ross Buchanan from Redwood Painting. In the interview Mr. Buchanan stated that "Dr. Wong
19 (phonetic) is doing the testing. He is our doctor. Industrial On-Site Medics do our blood draws.
20 They are qualified as phlebotomists to draw blood. We use them to do respiratory physicals.
21 When Industrial On-Site does annual physicals, they do spirometry function tests, take blood
22 pressure and pulse, and work with the employee to get the questionnaire filled out."

23 ///

24 ///

25 ///

26 ///

132. Industrial On-Site Medics (IOSM) technicians administered to patients the following vaccinations and/or TB test in 1999, without respondent being present:

CONTRACTOR AA

	<u>Patient</u>	<u>Vaccinations</u>	<u>Date(s)</u>
(1)	P.C.	Hepatitis A	June 2
(2)	J.M.	Hepatitis A T.B. Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	June 2 June 2 June 2 July 12 December 6
(3)	J.A.	Hepatitis A T.B.	June 2 June 2
(4)	A.C.	Hepatitis A T.B. Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	June 2 June 2 June 2 July 12 December 8
(5)	J.M.	T.B. Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	June 9 June 9 July 28 December 16
(6)	M.L.	T.B. Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	April 20 April 20 May 26 October 20
(7)	J.H.	Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	October 29 November 28 April 20
(8)	T.V.	Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	December 12 January 13 May 26
(9)	G.O.	T.B. Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	April 20 April 20 May 26 October 20
(10)	P.B.	Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	December 12 January 13 May 26

1	(11)	S.B.	T.B. Hepatitis B-1 Hepatitis B-2	July 28 August 4 September 16
2				
3	(12)	J.S.	T.B. Hepatitis B-1 Hepatitis B-2	August 4 August 4 September 16
4				
5	(13)	N.K.	T.B.	August 4
6	(14)	D.S.	T.B. Hepatitis B-1 Hepatitis B-2	August 4 August 4 September 16
7				
8	(15)	G.R.	T.B. Hepatitis B-3	October 29 May 26
9				
10	(16)	C.W.	T.B. Hepatitis B-3	October 29 April 20
11	(17)	S.S.	T.B. Hepatitis B-3	October 29 April 20
12				
13	(18)	T.W.	Hepatitis A Hepatitis B-1 Hepatitis B-2	July 12 July 12 August 10
14				
15	(19)	S.K.	Hepatitis A Hepatitis B-1 Hepatitis B-2	July 12 July 12 August 10
16				
17	(20)	J.L.	Hepatitis A	July 12
18	(21)	R.C.	T.B. Hepatitis B-1 Hepatitis B-2	August 16 August 16 September 22
19				
20	(22)	M.S.	Hepatitis A Hepatitis B-1	August 24 August 24
21				
22	(23)	Jack M.	Hepatitis A Hepatitis B-1 Hepatitis B-2	August 24 August 24 October 19
23				
24	(24)	D.D.	Hepatitis A Hepatitis B-1 Hepatitis B-2	August 24 August 24 October 5
25				
26	(25)	Steve S.	Hepatitis B-2 Hepatitis B-3	July 17, 1998 December 17, 1998
27	(26)	G.R.	T.B.	April 20

1	(27)	A.S.	T.B.	April 20
2	(28)	I.A.	Hepatitis B-1	October 19
3	(29)	F.C.	Hepatitis B-1 Hepatitis B-2	June 15 August 24
4	(30)	A.D.	Hepatitis B-2 Hepatitis B-3	January 21 June 11
5				
6	(31)	C.F.	Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	December 24 January 21 June 18
7				
8	(32)	D.H.	Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	December 24 January 21 June 15
9				
10	(33)	R.S.	Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	December 24 January 21 June 15
11				
12	(34)	R.V.	Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	December 24 January 21 June 16
13				
14	(35)	J.C.	Hepatitis B-1 Hepatitis B-2	December 24 January 21
15				
16	(36)	M.D.	Hepatitis B-1 Hepatitis B-2	December 24 January 21
17	(37)	Fletcher C.	Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	December 17 January 21 June 18
18				
19	(38)	S.B.	Hepatitis B-1 Hepatitis B-2	December 17 January 21
20				
21	(39)	E.A.	Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	December 17 January 21 June 17
22				
23	(40)	E.B.	Hepatitis B-2 Hepatitis B-3	January 15 June 15
24	(41)	Darin H.	Hepatitis B-1 Hepatitis B-2	August 30 October 14
25	(42)	E.C.	Hepatitis	August 30
26	(43)	C.D.	Hepatitis B-1 Hepatitis B-2	August 30 October 6
27				

1	(44)	S.P.	Hepatitis B-1 Hepatitis B-2	August 30 October 8
2	(45)	T.R.	Hepatitis B-1 Hepatitis B-2	September 7 October 18
3				
4	(46)	R.K.	Hepatitis B-1 Hepatitis B-2	October 14 November 23
5	(47)	M.G.	Hepatitis B-1 Hepatitis B-2	October 23 November 23
6				

CONTRACTOR NORTHWIND

7				
8	(48)	M.B.	T.B. Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	June 12 June 12 July 22 December 15
9				
10	(49)	C.B.	T.B. Hepatitis B-1 Hepatitis B-2	July 22 July 22 August 24
11				
12	(50)	L.B.	T.B. Hepatitis B-1 Hepatitis B-2	June 12 June 12 July 22
13				
14	(51)	V.C.	T.B. Hepatitis B-1 Hepatitis B-2	July 22 July 22 September 8
15				
16	(52)	D.S.	Hepatitis B-1 Hepatitis B-2	August 4 September 8
17				
18	(53)	M.S.	Hepatitis B-1 Hepatitis B-2	July 7 August 24
19				
20	(54)	D.M.	T.B. Hepatitis B-1 Hepatitis B-2	June 12 June 12 July 22
21				
22	(55)	G.L.	T.B. Hepatitis B-1 Hepatitis B-2	June 12 June 12 July 22
23				
24	(56)	D.K.	Hepatitis B-1 Hepatitis B-2	June 12 July 22
25				
26	(57)	M.H.	T.B. Hepatitis B-1 Hepatitis B-2 Hepatitis B-3	June 12 June 12 July 22 December 15
27				

1	(58)	A.DeIRio	T.B.	June 12
2			Hepatitis B-1	June 12
3			Hepatitis B-2	August 4
4			Hepatitis B-3	December 15
5	(59)	D.H.	T.B.	June 12
6			Hepatitis B-1	June 12
7	(60)	T.E.	T.B.	June 12
8			Hepatitis B-1	June 12
9			Hepatitis B-2	July 22
10			Hepatitis B-3	December 15
11	(61)	H.N.	Hepatitis B-1	October 5
12	(62)	O.G.	Hepatitis B-1	November 2
13	(63)	Kelly	Hepatitis B-1	December 15
14	<u>CONTRACTOR DIABLO PLUMBING</u>			
15	(64)	J.O.	T.B.	August 6
16			Hepatitis B-1	August 6
17			Hepatitis B-2	September 14
18	(65)	R.V.	T.B.	August 6
19			Hepatitis B-1	August 6
20			Hepatitis B-2	November 1
21	(66)	K.W.J.	T.B.	September 21
22			Hepatitis B-1	September 21
23			Hepatitis B-2	November 1
24	(67)	B.J.A.	T.B.	September 21
25			Hepatitis B-1	September 21
26			Hepatitis B-2	November 1
27	<u>CONTRACTOR DEVCON</u>			
	(68)	J.C.	Hepatitis B-1	October 26
			Hepatitis B-2	November 29
	(69)	J.P.	Hepatitis B-1	October 26
			Hepatitis B-2	November 23
	(70)	G.F.	Hepatitis B-1	October 26
			Hepatitis B-2	November 23
	(71)	S.R.	Hepatitis B-1	October 26
			Hepatitis B-2	November 23
	(72)	A.G.	Hepatitis B-1	October 26
			Hepatitis B-2	November 23

1	(73)	D.S.	Hepatitis B-1 Hepatitis B-2	October 26 November 23
2	(74)	K.S.	Hepatitis B-1 Hepatitis B-2	October 26 November 23
3				
4	(75)	B.S.	Hepatitis B-1 Hepatitis B-2	October 21 November 23
5	<u>CONTRACTOR BRAND SCAFFOLDING</u> --			
6	(76)	L.B.	Tetanus	June 14
7			Typhoid	June 14
8			Polio	June 14
9			Hepatitis A	June 14
10			Hepatitis B-1	June 14
11	(77)	N.J.	Tetanus	June 14
12			Typhoid	June 14
13			Polio	June 14
14			Hepatitis A	June 14
15			Hepatitis B-1	June 14
16	(78)	R.K.	Tetanus	May 4
17			Typhoid	May 4
18			Polio	May 4
19			Hepatitis A	May 4
20			Hepatitis B-1	May 4
21			Hepatitis B-2	June 2
22			Hepatitis B-3	November 24
23	(79)	C.M.	Tetanus	May 4
24			Typhoid	May 4
25			Polio	May 4
26			Hepatitis A	May 4
27			Hepatitis B-1	May 4
			Hepatitis B-2	June 2
	(80)	Charles M.	Tetanus	June 14
			Typhoid	June 14
			Polio	June 14
			Hepatitis A	June 14
			Hepatitis B-1	June 14
	(81)	R.R.	Tetanus	June 22
			Typhoid	June 22
			Polio	June 22
			Hepatitis A	June 22
			Hepatitis B-1	June 22

1	(82)	R.W.	Tetanus	June 22
			Typhoid	June 22
2			Polio	June 22
			Hepatitis A	June 22
3			Hepatitis B-1	June 22
4	(83)	P.M.	Tetanus	June 28
			Typhoid	June 28
5			Polio	June 28
			Hepatitis A	June 28
6			T.B.	June 28
			Hepatitis B-1	June 28
7			Hepatitis B-2	August 20
8	(84)	B.H.	Tetanus	July 29
			Typhoid	July 29
9			Polio	July 29
			Hepatitis A	July 29
10			Hepatitis B-1	July 29
			T.B.	July 29
11			Hepatitis B-2	August 20
12	(85)	M.G.	Tetanus	July 29
			Typhoid	July 29
13			Polio	July 29
			Hepatitis A	July 29
14			Hepatitis B-1	July 29
			T.B.	July 29
15	(86)	Mike G.	Tetanus	July 29
			Typhoid	July 29
16			Polio	July 29
			Hepatitis A	July 29
17			Hepatitis B-1	July 29
			T.B.	July 29
18			Hepatitis B-2	September 24

CONTRACTOR BABCOCK M D WILCOX

21	(87)	A.C.	Tetanus	November 22
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CONTRACTOR ANCHOR FENCE

23	(88)	S.C.	Hepatitis B-1	May 4
24			Hepatitis B-2	July 13
			Hepatitis B-3	November 10
25	(89)	S.S.	Hepatitis B-1	May 4
26			Hepatitis B-2	June 7
27			Hepatitis B-3	November 10

1 133. On approximately October 15, 1999 Industrial On-Site Medics (IOSM)
2 was billed for a shipment of ENGERIX and the order was to be shipped to respondent at the
3 corporation's headquarters; In approximately October 25, 1999 IOSM was billed for Havrix A
4 Vaccination and the order was to be shipped to respondent at the IOSM office headquarters; In
5 approximately October 27, 1999 IOSM was billed for a shipment of ENGERIX and the order was
6 to be shipped to respondent at the corporation's headquarters; In approximately October 28, 1999
7 IOSM was billed for TETANUS TOX ADS and the order was shipped to respondent at the
8 corporation's headquarter address; In approximately November 22, 1999 IOSM was billed for
9 ENGERIX and the order was to be shipped to respondent at the corporation's headquarters
10 address; In approximately December 15, 1999 IOSM was billed for ENGERIX and the order was
11 to be shipped to respondent at the corporation's headquarters address; In approximately October
12 25, 1999 IOSM ordered from Sycamore Medical Pharmacy in Concord, California, INFLUENZA
13 VACCINATION VIALS under respondent's name.

14 **Other Vaccinations/TB Testing**

15 134. In addition to those listed in paragraph 132, IOSM technicians
16 administered vaccinations and/or TB tests to many other patients/employees without respondent's
17 supervision, or the supervision of any other licensed physician or authorized licensed health
18 professional. These additional patients include, but are not limited to, the following:

19 a. On November 12, 1998, 25 employees of Underground Construction in
20 Concord were administered: Hepatitis A vaccine, Hepatitis B vaccine, and/or a Tetanus vaccine.

21 b. On May 27, 1999, 19 employees at the Underground Construction Office
22 were administered the Hepatitis B vaccine.

23 c. On or about 6/12/1999 and 6/14/1999, technician Virginia Siegel
24 administered, then read tuberculosis (TB) tests, to at least 8 persons for their possible employer
25 North Winds. On or about 6/14/1999 respondent signed a CDC form 7354 "TB Infectious Free
26 Staff Certificate" for each of those 8 persons in which respondent certifies that they are free of
27 tuberculosis. Respondent never met or observed theses 8 persons for North Winds: Mark B.,

1 Lonnie B., Arturo D., Trinidad E., Darryl H., Michael H., Gilbert L., and Danny M.. Yet,
2 respondent certified in CDC form 7354 that he evaluated these patients and that the evaluation
3 was done by a physician and surgeon.

4 d. On October 26, 1999, 22 employees of Turnstone Systems, Inc. in
5 Mountain View were administered the influenza virus vaccine.

6 e. On October 12, 1999, IOSM technician R. Moore administered the
7 influenza virus vaccine for 1999-2000 to 10 employees of Orchard Properties.

8 f. On November 3, 1999, 8 employees of Framatome and/or Rockridge
9 Technologies authorized and were administered the influenza virus vaccine for 1999-2000.

10 g. On November 18, 1999, IOSM technician Mary Welton administered the
11 influenza virus vaccine for 1999-2000 to 20 employees of Pioneer House.

12 **PATIENT J.H.**

13 135. On or about August 27, 1999 an IOSM preprinted Occupational Lead
14 Exposure Questionnaire and Examination form was filled out regarding patient J.H. The form
15 indicated the patient was, "40 years old and that he was a sandblaster and painter for Northbay
16 Sandblasting". The form indicated that the patient "denied" a medical history, that the last date
17 he had a blood lead level test was on "August of 1999 and that the level was 42." The form also
18 indicated that the patient was "a non smoker". The preprinted questionnaire did not state whether
19 the individual had any hobbies or past exposure to lead. The form was signed by a technician
20 whose name is not legible.

21 136. A preprinted urinalysis results form was filled out regarding patient J.H.
22 which is dated August 27, 1999. No identifying information is provided on the form indicating
23 which technologist performed the test and filled in the results. However, Zulema Garcia
24 identified herself as the technician who performed the tests when she was interviewed by Medical
25 Board investigators. In addition, no record exists that a microscopic examination was performed.

26 ///

1 137. There is a report dated September 14, 1999 addressed to patient J.H. The
2 wording of the letter implies that a copy was sent to Northbay Sandblasting. The document is
3 entitled "physical examination". The letter is signed by Michael McBride for IOSM. Mr.
4 McBride is not a licensed physician, nurse practitioner, or physician assistant. Within the body of
5 the letter he makes the diagnosis that: "He does not appear to have any symptoms suggesting a
6 toxic exposure to lead." The physical examination is inadequate and contains no elements
7 necessary for a competent examination. Nevertheless, he makes a recommendation that: "Based
8 on the elevated blood levels we will continue to monitor his levels on a bi-monthly basis." The
9 letter also includes blood lead level and zinc results without giving test dates. If in fact this letter
10 was sent to the employer, then confidential information was improperly released.

11 138. On or about October 27, 1999, a sign-in sheet was filled out regarding
12 patient J.H.. The sheet included the patient's social security number and his signature. The form
13 also indicated that the following services were performed by Industrial On-Site Medics
14 ("IOSM"): "PFT, Lead physical, Blood lead, blood bun, blood serum, cbc , and a drug screen."
15 The name "Lara" was filled next to the line indicating technician. The preprinted form also had a
16 stamp that indicated that Dr. Wang had reviewed the form. Also on October 27, 1999, an IOSM
17 preprinted occupational lead exposure questionnaire and examination form was filled out for
18 patient J.H. The form was signed by a technician whose name appears but is not legible. In
19 addition a urinalysis results form was filled out for patient J.H. with a date of October 27, 1999.
20 The form does not identify who the technician was that performed the tests or filled out the form.
21 Furthermore no record exists that a microscopic examination was performed.

22 139. On or about October 27, 1999, an IOSM preprinted respirator medical
23 evaluation questionnaire was filled out for patient J.H. The signature line for the technician who
24 conducted the examination is filled in but the signature is not legible. There is no indication that
25 the technician who performed the evaluation is properly licensed or otherwise qualified to
26 perform the evaluation. In addition, the patient history is incomplete because it lacks a smoking
27 history. The examination is incomplete and inadequate and was reviewed by Virginia Siegel, not

1 a licensed healthcare professional. There is also an October 27, 1999 spirometry report which has
2 no identification as to patient identification. Presumably it is a printout of the results for patient
3 J.H.. The report is not signed so that one does not know who the technician was that performed
4 the test. There is also no physician interpretation unless a one page preprinted IOSM form for a
5 respirator use medical exam for patient J.H., and signed by respondent, as the medical reviewing
6 officer, is considered an interpretation of the spirometry report. This one-page form also dated
7 October 27, 1999 for patient J.H. has a signature line for the identity of the evaluator who
8 conducted the medical exam. The signature is not legible. Once again, one does not know the
9 qualifications of the person who conducted the examination.

10 140. A "Doctor's First Report of Occupational Injury or Illness" dated October
11 27, 1999, indicates that Dr. Wang signed this report. The form strongly suggests that respondent
12 examined the patient and had rendered treatment consisting in part of "PE, Hx, PFT, LABS,
13 etc."

14 141. There is a letter dated November 3, 1999 addressed to patient J.H.. The
15 wording of the letter implies that a copy was sent to Northbay Sandblasting. The letter is entitled
16 "Physical Examination." The letter does not demonstrate that a physical examination actually
17 occurred with the exception of recommendations. If in fact this letter was sent to the employer,
18 then confidential patient information was released improperly. The letter is signed by Virginia
19 Siegel with the initials "MICP" and "OHT" after her name.

20 PATIENT D.H.

21 142. On August 27, 1999 an Occupational Lead Exposure Questionnaire and
22 Examination form regarding patient D.H. was filled out. The signature of the person conducting
23 the physical examination is not legible. The history and physical information to be filled in is
24 inadequate for a lead exposure questionnaire. On the second page of the questionnaire it is noted
25 that the patient has "a rash on both forearms." No other notation is made as to whether a follow-
26 up examination was performed to determine whether the rash was work related.

1 143. There exists an August 27, 1999 Urinalysis Report for patient D.H. which
2 indicates a "trace/moderate amount of blood." The report is not signed nor is there an indication
3 as to the qualifications of the person who filled out the report. Furthermore there is a lack of
4 follow-up to determine whether a microscopic examination was performed to confirm whether
5 the urinalysis result was a false positive.

6 144. There is a letter dated September 14, 1999 addressed to patient D.H.
7 entitled "Physical Examination." The wording of the letter implies that it was sent to Northbay
8 Sandblasting. The letter contains confidential medical information that should not have been sent
9 to the employer, such as, "denies any problems with his back or extremities and has good balance
10 and memory. Denies any history of back pain, chronic respiratory problems, hepatitis or liver
11 problems, heart problems and excessive alcohol use." The letter was signed by Michael McBride
12 who performed the physical examination. The physical and history as stated within the body of
13 the letter is inadequate and incomplete. The letter also states that, "Patient has a rash on both of
14 his forearms", and that blood tests showed "cell morphology [with] positive changes." There is
15 an absence of comment on whether any follow-up or testing was done to determine the cause of
16 the rash or the reason for "cell morphology."

17 145. On October 19, 1999, an "Occupational Lead Exposure Questionnaire and
18 Examination" form regarding patient D.H. was filled out. The signature of the person conducting
19 the physical examination is not legible. The history and physical information to be filled in is
20 inadequate for a lead exposure questionnaire.

21 146. An IOSM "Urinalysis Result Form" on patient D.H. and dated October 19,
22 1999 was filled out without identifying the analyst. There is no indication that a microscopic
23 examination was performed. There is also an absence of information as to whether respondent
24 reviewed the results.

25 147. An IOSM "Respirator Use Medical Examination" form was filled out for
26 patient D.H. and dated October 19, 1999. The signature of the examiner is not legible and there
27 is no indication of their license status. The form mixes medical history and physical information

1 along with employer recommendations which is a violation of the patient's right to privacy and of
2 OSHA regulations. The medical history that is recorded is incomplete in part because no
3 smoking history is included. The recorded physical examination is inadequate for a respirator use
4 physical pursuant to regulations.

5 148. A "Spirometry Report" dated October 19, 1999 is included in medical
6 records for patient D.H. but fails to indicate on the form the name of the patient. There is also no
7 indication as to the identity of the technician who performed the test and their qualifications as a
8 technician. There is also no interpretation by respondent noted.

9 149. An IOSM "Respirator Medical Evaluation and Questionnaire" on patient
10 D.H. was filled out and dated October 19, 1999. An illegible signature appears on the line for the
11 technicians name and no qualifications or licensure status is given for the technician. The
12 examination is incomplete and inadequate. The initials "VS" appear as the person who reviewed
13 the questionnaire.

14 150. There is a "Doctor's First Report of Occupational Injury and Illness" for
15 patient D.H. dated October 19, 1999. The report is signed by respondent. The report in part
16 states that treatment was provided that included, "PE, Hx, PFT, etc." The report is signed by
17 respondent although he did not personally examine the patient yet it strongly suggests that
18 respondent performed the treatment.

19 151. There is a letter dated October 26, 1999 addressed to patient D.H. The
20 wording of the letter implies that it was sent to Northbay Sandblasting, entitled "Physical
21 Examination." If this letter was sent to the employer, confidential medical information was
22 improperly disclosed. The letter was signed by Virginia Siegel with the initials "MICP" and
23 "OHT" after her signature. The letter reflects an inadequate medical history. Based on the
24 letter's content, an inadequate physical examination was performed. The examination of this
25 patient was performed by Ms. Siegel and not by respondent, who indicates on the letter that he
26 reviewed its content.

27 ///

PATIENT R.W.

152. An "Occupational Lead Exposure Questionnaire and Examination" form was filled out for patient R.W. and dated August 27, 1999. The form recorded amongst other things "a blood pressure of 150/100 ;difficulty in breathing; joint pains; weakness in hands; shortness of breath; and a loss of feeling in the extremities." No disposition is made regarding either the elevated blood pressure reading or the symptoms of loss of feeling in the extremities. The form is signed by a technician whose name is not legible and whose qualifications are not listed.

153. An IOSM "Urinalysis Result Form" was filled out for patient R.W. and Dated August 27, 1999 without identifying the analyst. The results in part indicated large amounts of blood in the urine. There is no indication that a microscopic examination was performed even though large amounts of blood were found in the urine specimen. There is also an absence of information as to whether respondent reviewed the results.

154. A letter dated September 14, 1999 was sent to patient R.W. and is entitled "Physical Examination". It was signed by Michael McBride. The content of the letter constitutes an inadequate medical history with an inadequate physical examination. The letter if sent to the employer also divulges confidential medical information such as, "Denies any history of chest pain, hepatitis or liver problems, heart problems and excessive alcohol use...". In addition the letter interprets clinical medical data and makes a diagnosis although Mr. McBride is not a licensed physician. The letter states in part that, "He does not appear to have any symptoms suggesting a toxic exposure to lead".

155. An IOSM "Occupational Lead Exposure Questionnaire and Examination" form dated October 19, 1999 was filled out for patient R.W.. The signature of the technician filling out the form is not legible and no information is given regarding their license status. The medical history that is recorded is inadequate as is the physical examination results that are recorded. For example, "the patient's blood pressure was recorded as being 140/96, and there is a notation that the patient was experiencing weakness and pain in the joints for approximately six

1 months ." No notation is given regarding any disposition of the patient's elevated blood pressure
2 nor of his symptoms of pain and weakness in the joints. In addition an entry is made that the
3 patient had, "edema due to gout." This constitutes a diagnosis by a technician who is not a
4 licensed physician.

5 156. An IOSM "Respirator Medical Evaluation and Questionnaire" on patient
6 R.W. was filled out and dated October 19, 1999. An illegible signature appears on the line for the
7 technicians name and no qualifications or license status is given for the technician. The
8 examination is incomplete and inadequate. The initials "VS" appear as the person who reviewed
9 the questionnaire.

10 157. An IOSM "Urinalysis Result" form dated October 19, 1999 was filled out
11 regarding patient R.W.. The report indicated in part that the patient's "urobilinogen was 0.2 and
12 normal; traces of keytones." The urobilinogen is in fact not normal. There is an absence of any
13 notation regarding whether a microscopic examination was performed and the identity of the
14 reporting technician and their qualifications.

15 158. An IOSM "Respirator Use Medical Examination" form was filled out for
16 patient R.W. and dated October 19, 1999. The signature of the examiner is not legible and there
17 is no indication of their license status. The form mixes medical history and physical information
18 along with employer recommendations which is a violation of the patient's right to privacy and of
19 OSHA regulations. The medical history that is recorded is incomplete in part because no
20 smoking history is included. The recorded physical examination is inadequate for a respirator use
21 physical pursuant to regulations.

22 159. A "Spirometry Report" dated October 19, 1999 is included in medical
23 records for patient R.W. but fails to indicate on the form the name of the patient. There is also no
24 indication as to the identity of the technician who performed the test and their qualifications as a
25 technician. There is also no interpretation recorded by the respondent.

26 160. There is a "Doctor's First Report of Occupational Injury and Illness" for
27 patient R.W. dated October 19, 1999. The report is signed by respondent. The report in part

1 states that treatment was provided that included, "PE, Hx, PFT, etc." The report is signed by
2 respondent although he did not personally examine the patient.

3 161. An October 26, 1999 letter from IOSM is addressed to patient R.W. and
4 entitled "Physical Examination" and was signed by Virginia Siegel. The letter if sent to the
5 employer disclosed confidential medical information. The letter also demonstrates that Ms.
6 Siegel is interpreting medical data and giving a diagnosis although she is not a licensed physician.
7 The letter constitutes an inadequate medical history and physical examination. For example, the
8 letter states in part that, "Urine analysis was normal and patient continued to have no symptoms
9 that would suggest toxic exposure to lead. Additional blood tests show some abnormalities..."

10 AUDIOMETRIC TESTING

11 162. In or about June 1999, technician Zulema Garcia administered hearing
12 level tests on-site to 5 employees of Bay Ship and Yacht: Placido C., Hyon C., Francisco C., Lino
13 B., and Sak L.. For each test given, Ms. Garcia completed an "IOSM Audiometry Result Form"
14 which respondent later signed as having reviewed. Ms. Garcia diagnosed hearing loss in 3 of the
15 5 employees. Respondent never met or observed the 5 employees. There is no documentation of
16 any follow-up examination, or any recommendation of a follow-up examination, of those
17 identified with hearing loss.

18 163. In or about August 1999, technician Zulema Garcia administered hearing
19 level tests on-site to 4 employees of Bay Ship and Yacht: Daniel R., Manuel B., Kim D., and
20 Gordon K.. For each test given, Ms. Garcia completed an "IOSM Audiometry Result Form"
21 which respondent later signed as having reviewed. Ms. Garcia either diagnosed hearing loss or
22 had inconclusive results which needed expert review in all 4 tests. Respondent never met or
23 observed the 4 employees. There is no documentation of any follow-up examination, or any
24 recommendation of a follow-up examination, of those identified with hearing loss or those with
25 inconclusive results.

26 164. On or about June 9, 1999, technician R. Moore administered a hearing
27 level test on-site to employee Jesse G. of American Instrument. The technician completed an

1 "IOSM Audiometry Result Form" which respondent later signed as having reviewed. In the
2 "Comments" section of the form, the technician diagnosed "hearing loss, bilateral Left ear more
3 domminen" (sic). There is no documentation of any follow-up examination, or any
4 recommendation of a follow-up examination, for this employee.

5 165. On or about June 10, 1999, technician R. Moore administered a hearing
6 level test on-site to employee Loc N. of American Instrument. The technician completed an
7 "IOSM Audiometry Result Form" which is stamped as respondent later having reviewed. In the
8 "Comments" section of the form, the technician diagnosed "minor hearing loss, high frequency
9 bilateral" with "minor" crossed out and "significant" handwritten with the addition "Right
10 moderate low frequency loss." There is no documentation of any follow-up examination, or any
11 recommendation of a follow-up examination, for this employee.

12 166. On or about September 21, 1999, technician Virginia Siegel administered
13 hearing level tests on-site to 2 employees of Bay Ship and Yacht: Oscar A. and Christian B.. For
14 each test given, Ms. Siegel completed an "IOSM Audiometry Result Form" which respondent
15 later signed as having reviewed. Ms. Siegel diagnosed hearing loss in 1 of the 2 tests.
16 Respondent never met or observed the 2 employees. There is no documentation of any follow-up
17 examination, or any recommendation of a follow-up examination, of the employee identified with
18 hearing loss.

19 167. On or about September 28, 1999, technician Zulema Garcia administered a
20 hearing level test on-site to employee Jose C. of Bay Ship and Yacht. Ms. Garcia completed an
21 "IOSM Audiometry Result Form" which respondent later signed as having reviewed. Ms. Garcia
22 diagnosed a hearing loss. Respondent never met or observed the employee. There is no
23 documentation of any follow-up examination, or any recommendation of a follow-up
24 examination.

25 168. On or about September 28, 1999, technician Virginia Siegel administered
26 hearing level tests on-site to at least 6 employees of Power Engineering: Ronny P., Luis C., Dan
27 B., Larry B., Don M. and Doug O.. For each test given, Ms. Siegel completed an "IOSM

1 Audiometry Result Form" which respondent later signed as having reviewed. Ms. Siegel either
2 diagnosed hearing loss or had inconclusive results which needed expert review in all 6 tests.
3 Respondent never met or observed the 6 employees. There is no documentation of any follow-up
4 examination, or any recommendation of a follow-up examination, of those identified with hearing
5 loss or of those with inconclusive results needing expert review.

6 169. On or about October 1, 1999, technician R. Moore administered hearing
7 level tests on-site to 11 employees of Power Engineering: Mike S., Jim R., William P., Juan A.,
8 Jose C., Marty G., Jose D., Vaughn C., Jim B., Rod J., and Laurence K.. For each test given, Mr.
9 Moore completed an "IOSM Audiometry Result Form" which respondent later signed as having
10 reviewed. Mr. Moore diagnosed either hearing loss or an ear infection in 9 of the 11 tests.
11 Respondent never met or observed the 11 employees. There is no documentation of any follow-
12 up examination, or any recommendation of a follow-up examination, of those identified with
13 either hearing loss or ear infection.

14 170. On or about October 3, 1999, technician R. Moore administered a hearing
15 level test to employee Danny R. of Power Engineering. Mr. Moore completed an "IOSM
16 Audiometry Result Form" which respondent later signed as having reviewed. Mr. Moore
17 confirmed the patient's statement and diagnosed a 70% hearing loss in the left ear. Respondent
18 never met or observed the employee. There is no documentation of any follow-up examination,
19 or any recommendation of a follow-up examination for this employee identified with hearing
20 loss.

21 171. On or about October 4, 1999, technician R. Moore administered hearing
22 level tests on-site to 5 employees of Power Engineering: David M., Ken L., Rob L., Gary G., and
23 Alberto A.. For each test given, Mr. Moore completed an "IOSM Audiometry Result Form"
24 which respondent later signed as having reviewed. Mr. Moore indicated that 2 of the 5 test
25 results needed expert review. Respondent never met or observed the 5 employees. There is no
26 documentation of any follow-up examination, or any recommendation of a follow-up
27 examination, of those identified as needing expert review.

1 172. On or about October 5, 1999, technician S. Lara administered hearing
2 level tests on-site to 2 employees of Bay Ship and Yacht: Jose G. and Rudy G.. For each test
3 given, Mr. Lara completed an "IOSM Audiometry Result Form" which respondent later signed as
4 having reviewed. Mr. Lara diagnosed hearing loss in both tests. Respondent never met or
5 observed the 2 employees. There is no documentation of any follow-up examination, or any
6 recommendation of a follow-up examination, of those identified with hearing loss.

7 173. On or about October 25, 1999, technician S. Lara administered hearing
8 level tests on-site to 14 employees of Power Engineering: Juan B., Kelly B., Vince E., Steve T.,
9 Jeff S., Fred H., Keith B., Bruce B., Lorenzo D., Josh D., Kevin M., William P., Alex M., and
10 Marty L.. For each test given, Mr. Lara completed an "IOSM Audiometry Result Form" which
11 respondent later signed as having reviewed. Mr. Lara diagnosed hearing loss in 3 of the 14 tests.
12 Respondent never met or observed the 14 employees. There is no documentation of any follow-
13 up examination, or any recommendation of a follow-up examination, of those identified with
14 hearing loss.

15 174. On or about October 28, 1999, technician S. Lara administered a hearing
16 level test on-site to employee Bob B. of Power Engineering. Mr. Lara completed an "IOSM
17 Audiometry Result Form" which respondent later signed as having reviewed. Mr. Lara diagnosed
18 a hearing loss. Respondent never met or observed the employee. There is no documentation of
19 any follow-up examination, or any recommendation of a follow-up examination, of the employee
20 identified with hearing loss.

21 175. On or about November 6, 1999, technician Zulema Garcia administered
22 hearing level tests on-site to 7 employees of Redwood Painting: Larry H., John H., Moses H.,
23 Toliver H., Chris J., Dave L., and Matt L.. For each test given, Ms. Garcia completed an "IOSM
24 Audiometry Result Form" which respondent later signed as having reviewed. Ms. Garcia listed
25 the results without written comment. Respondent never met or observed the 7 employees. There
26 is no documentation of any follow-up examination, or any recommendation of a follow-up
27 examination, of those tested.

1 176. On or about November 9, 1999, technician M. Welton administered a
2 hearing level test to employee John B. of Power Engineering. Ms. Welton completed an "IOSM
3 Audiometry Result Form" which respondent later signed as having reviewed. Ms. Welton
4 diagnosed a hearing loss. Respondent never met or observed the employee. There is no
5 documentation of any follow-up examination, or any recommendation of a follow-up
6 examination, of the employee identified with hearing loss.

7 177. On or about November 30, 1999 and December 7, 1999, technicians
8 Zulema Garcia and/or M. Mihok administered hearing level tests on-site to 7 employees of Bay
9 Ship and Yacht: Ricardo G., Jay B., John C., Dan J., Ruben L., Larry G., and Robert R.. For each
10 test given, Ms. Garcia and/or Ms. Mihok completed an "IOSM Audiometry Result Form" which
11 respondent later signed as having reviewed. Ms. Garcia and/or Ms. Mihok diagnosed hearing
12 loss in 5 of the 7 tests. Respondent never met or observed the 7 employees. There is no
13 documentation of any follow-up examination, or any recommendation of a follow-up
14 examination, of those identified with hearing loss.

15 178. On or about December 15, 1999, technician O. Gomez administered
16 hearing level tests on-site to 3 employees of Power Engineering: Joe M., Gary B., and Ed B.. For
17 each test given, Mr. Gomez completed an "IOSM Audiometry Result Form" which respondent
18 later signed as having reviewed. Mr. Gomez diagnosed hearing loss in 2 of the 3 tests.
19 Respondent never met or observed the 3 employees. There is no documentation of any follow-up
20 examination, or any recommendation of a follow-up examination, of those identified with hearing
21 loss.

22 **OTHER TESTING Re: RESPIRATOR USE**

23 179. IOSM developed and used at least four form documents regarding the
24 evaluation of patients/employees for respirator use. These documents are:

25 a. IOSM "Respirator Use Medical Examination" in which it certifies that the
26 examination in accordance with federal OSHA rules 18 CCR section 5144 for respirator use. It
27 includes documentation of a medical history, medical examination and Pulmonary Fit Test (PFT).

1 Section 5144 requires that the medical evaluations be performed by a physician or other licensed
2 health care professional. Respondent, however, never performed the medical examination and
3 evaluation although he usually signed the form as the medical reviewing officer. It was the IOSM
4 technicians who conducted the medical examinations/evaluations and made diagnostic findings
5 and conclusions, which were sometimes wrong.

6 b. IOSM OSHA Respirator Medical Evaluation Questionnaire, per OSHA
7 Rules and Regulations Appendix C to 1910.134 in which it states that the evaluation will be
8 reviewed only by a health care professional. The form asks for information about personal
9 medical history and also provides for evaluations by the "medical review officer" of the
10 patient/employee's blood pressure, pulse, respiration, and lung sounds. Respondent, however,
11 did not review this form evaluation. It was always reviewed by Ms. Siegel, who is not a
12 physician or other licensed health care professional.

13 c. IOSM Spirometry Report in which the technician administering the test
14 was usually not identified. Respondent did not administer the spirometry test and often did not
15 review the test results.

16 d. IOSM Qualitative Respirator Fit in which the form documented the
17 technician who assessed the fit. At times, an employee was fitted for a respirator when the
18 employee was not medically authorized for respirator use.

19 180. On or about 5/4/1999 and 5/11/1999, technician Zulema Garcia conducted
20 a medical evaluation and administered a spirometry test to 3 employees of Babcock & Wilcox:
21 Joan K., Bill P., and Robert B.. For each employee, Ms. Garcia completed and signed an IOSM
22 form "Respirator Use Medical Exam" which respondent later signed as having reviewed. Ms.
23 Garcia also completed and signed an OSHA Respirator Medical Evaluation Questionnaire for
24 each employee, which Ms. Siegel signed, indicating that she was the "health care professional"
25 who did the review. For each of the 3 employees, Ms. Garcia also completed the Spirometry
26 Report, which respondent signed as having reviewed. Respondent never met or observed the 3
27 employees.

1 181. On or about 5/13/1999, technician Lisa Holland conducted a medical
2 evaluation and apparently administered a spirometry test to employee Melba C. of employer
3 Performance Mechanical Inc. (PMI). For this employee, Ms. Holland completed and signed a
4 form "Respirator Use Medical Examination" indicating a "moderate obstruction" and "poor tidal
5 volume" with "moderate" crossed out and "severe" handwritten over it. The examination form
6 also indicates that "employee has been informed to increased risk of lung cancer attributed to the
7 combined effect of smoking and potential exposure." Respondent signed the form as the medical
8 reviewing officer. In the "Respiratory Compliance" box on the form, it indicates "no respirator
9 use permitted." Also on 5/13/1999, an unidentified technician, presumably Ms. Holland,
10 completed the Spirometry Report, which respondent signed as having reviewed. In the report, it
11 states that testing indicates a mild restriction and that there is a moderate obstruction, which is
12 crossed out with "severe" handwritten in place of moderate. There appears to be no completed
13 OSHA Respirator Medical Evaluation Questionnaire for this employee. There is also an IOSM
14 "Qualitative Respirator Fit" form filled out by Ms. Holland, indicating that employee Melba C.
15 was fitted for use of a respirator. Respondent never met or observed this employee and there is
16 no documentation indicating a follow-up with this employee about the change in "diagnosis."

17 182. On or about 5/19/1999, technician Lisa Holland conducted a medical
18 evaluation and apparently administered a spirometry test to employee Milton B. of employer
19 Babcock & Wilcox. For this employee, Ms. Holland completed and signed a form "Respirator
20 Use Medical Exam" indicating "no significant problems" but which also indicates that "employee
21 has been informed to increased risk of lung cancer attributed to the combined effect of smoking
22 and potential exposure." Respondent signed the form as the medical reviewing officer. In the
23 "Respiratory Compliance" box on the form, it indicates "no medical restrictions on respirator
24 use." Also on 5/18/1999, an unidentified technician, presumably Ms. Holland, completed the
25 Spirometry Report, which respondent did not sign as having reviewed. In the report, it states that
26 testing indicates "normal spirometry." Technician Ms. Holland also completed on May 17 or
27 May 18, 1999, the IOSM OSHA Respirator Medical Evaluation Questionnaire for this employee.

1 This medical evaluation was signed by Ms. Siegel, indicating that she was the "health care
2 professional" who did the review. On May 18, 1999, Technician Holland also completed an
3 IOSM "Qualitative Respirator Fit" form, indicating that employee Milton B. was fitted for use of
4 a respirator. Respondent never met or observed this employee.

5 183. On or about 5/19/1999, Ms. Zulema Garcia conducted a medical
6 evaluation and apparently administered a spirometry test to employee James C. of employer PMI.
7 For this employee, Ms. Garcia completed and signed a form "Respirator Use Medical Exam"
8 indicating "no significant problems" but which also indicates that "employee has been informed
9 to increased risk of lung cancer attributed to the combined effect of smoking and potential
10 exposure." Respondent signed the form as the medical reviewing officer. In the "Respiratory
11 Compliance" box on the form, it indicates "no medical restrictions on respirator use." Also on
12 5/19/1999, an unidentified technician, presumably Ms. Garcia, completed the Spirometry Report,
13 which respondent did not sign as having reviewed. In the report, it states that testing indicates
14 "normal spirometry." Ms. Garcia also completed on 5/19/1999, the IOSM OSHA Respirator
15 Medical Evaluation Questionnaire for this employee. This medical evaluation was signed by Ms.
16 Siegel, indicating that she was the "health care professional" who did the review. On 5/19/1999,
17 Ms. Garcia also completed an IOSM "Qualitative Respirator Fit" form, indicating that employee
18 James C. was fitted for use of a respirator. Respondent never met or observed this employee.

19 184. On or about 5/19/1999, a technician identified only as "AC" conducted a
20 medical evaluation and apparently administered a spirometry test to employee Glenn G. of
21 employer PMI. For this employee, the technician completed and signed a form "Respirator Use
22 Medical Exam" indicating "no significant problems" but which also indicates that "employee has
23 been informed to increased risk of lung cancer attributed to the combined effect of smoking and
24 potential exposure." The findings and conclusions indicate a "moderate obstruction" with
25 "moderate" crossed out and "severe" handwritten over it. Respondent signed the form as the
26 medical reviewing officer. In the "Respiratory Compliance" box on the form, it indicates "no
27 respirator use permitted." Also on 5/19/1999, an unidentified technician, presumably AC,

1 completed the Spirometry Report, which respondent signed as having reviewed. In the report, it
2 states that testing indicates a mild restriction and that there is a moderate obstruction, which is
3 crossed out with "severe" handwritten in place of "moderate." Technician AC also completed on
4 5/19/1999, the IOSM OSHA Respirator Medical Evaluation Questionnaire for this employee.
5 This medical evaluation was signed by Ms. Siegel, indicating that she was the "health care
6 professional" who reviewed it. There is also an IOSM "Qualitative Respirator Fit" form filled
7 out by technician AC, indicating that employee Glenn G. was fitted for use of a respirator.
8 Respondent never met or observed this employee and there is no documentation indicating a
9 follow-up with this employee about the change in "diagnosis."

10 185. On or about 5/25/1999, technician Lisa Holland conducted a medical
11 evaluation and apparently administered a spirometry test to employee Denise R. of employer
12 Babcock & Wilcox. For this employee, technician Holland completed and signed a form
13 "Respirator Use Medical Exam" indicating "no significant problem", which has been crossed out
14 and "relevant abnormality" checked. The findings and conclusions indicate a "moderate
15 obstruction" with "moderate" crossed out and "severe" handwritten over it. Respondent signed
16 the form as the medical reviewing officer. In the "Respiratory Compliance" box on the form, it
17 indicates "no respirator use permitted." Also on 5/25/1999, an unidentified technician,
18 presumably Ms. Holland, completed the Spirometry Report, which respondent signed as having
19 reviewed. In the report, it states that testing indicates a "moderate obstruction as well as low vital
20 capacity, possibly from a concomitant restrictive defect" but "moderate" is crossed out with
21 "severe" handwritten in its place. Technician Holland also completed on 5/25/1999, the IOSM
22 OSHA Respirator Medical Evaluation Questionnaire for this employee. This medical evaluation
23 was signed by Ms. Siegel, indicating that she was the "health care professional" who did the
24 review. The medical evaluation form also states that the employee Denise R. would like to talk
25 with the health care professional who will review the questionnaire. There is also an IOSM
26 "Qualitative Respirator Fit" form filled out by technician Holland, indicating that employee
27 Denise R. was fitted for use of a respirator. Respondent never met or observed this employee and

1 there is no documentation indicating a follow-up with this employee so that she spoke with a
2 health professional about the evaluation and was informed of the change in "diagnosis."

3 186. On or about 5/27/1999, technician Ms. Zulema Garcia conducted a
4 medical evaluation and apparently administered a spirometry test to employee Patrick L. of
5 employer Babcock & Wilcox. For this employee, Ms. Garcia completed and signed a form
6 "Respirator Use Medical Exam" in which the findings and conclusions indicate a "moderate
7 obstruction" with "moderate" crossed out and "severe" handwritten over it. Respondent signed
8 the form as the medical reviewing officer. In the "Respiratory Compliance" box on the form, it
9 indicates "no respirator use permitted." Also on 5/27/1999, an unidentified technician,
10 presumably Ms. Garcia, completed the Spirometry Report, which respondent did not sign as
11 having reviewed. In the report, it states that testing indicates "severe obstruction as well as low
12 vital capacity, possibly from a concomitant restrictive defect." Technician Holland completed, on
13 5/19/1999, the IOSM OSHA Respirator Medical Evaluation Questionnaire for employee Patrick
14 L.. This medical evaluation was signed by Ms. Siegel, indicating that she was the "health care
15 professional" who did the review. The medical evaluation form also states that the employee
16 Patrick L. would like to talk with the health care professional who will review the questionnaire.
17 There is also an IOSM "Qualitative Respirator Fit" form filled out by an unidentified technician,
18 indicating that employee Patrick L. was fitted for use of a respirator, with no indication of pass or
19 fail. Respondent never met or observed this employee and there is no documentation indicating a
20 follow-up with this employee so that he spoke with a health professional about the evaluation and
21 was informed of the change in "diagnosis."

22 187. On or about 6/04/1999, technician Virginia Siegel conducted a medical
23 evaluation and apparently administered a spirometry test to employee Melvin A. of employer
24 Babcock & Wilcox. For this employee, Ms. Siegel completed and signed a form "Respirator Use
25 Medical Exam" in which the findings and conclusions indicate a "moderate obstruction" with
26 "moderate" crossed out and "severe" handwritten over it. Although the employee is identified as
27 a "non-smoker", the form also states that "employee has been informed of increased risk of lung

1 cancer attributed to the combined effect of smoking and potential exposure." Respondent signed
2 the form as the medical reviewing officer. In the "Respiratory Compliance" box on the form, it
3 indicates "no respirator use permitted." Also on 6/04/1999, an unidentified technician,
4 presumably Ms. Siegel, completed the Spirometry Report, which respondent did not sign as
5 having reviewed. In the report, it states that testing indicates a "severe obstruction as well as low
6 vital capacity, possibly from a concomitant restrictive defect." Ms. Siegel also completed on
7 6/04/1999, the IOSM OSHA Respirator Medical Evaluation Questionnaire for this employee.
8 This medical evaluation was signed by Ms. Siegel, indicating that she was the "health care
9 professional" who did the review. The medical evaluation form also states that the employee
10 Melvin A. would like to talk with the health care professional who will review the questionnaire.
11 There is also an IOSM "Qualitative Respirator Fit" form filled out by Ms. Siegel, indicating that
12 employee Melvin A. was fitted for use of a respirator. Respondent never met or observed this
13 employee and there is no documentation indicating a follow-up with this employee so that he
14 spoke with a health professional about the evaluation and was informed of the evaluation that "no
15 respirator use permitted."

16 188. On or about 6/08/1999, technician Ms. Zulema Garcia conducted a
17 medical evaluation and apparently administered a spirometry test to employee Lino B. of
18 employer Bay Ship & Yacht. For this employee, Ms. Garcia completed and signed a form
19 "Respirator Use Medical Exam" in which the findings and conclusions indicate "elevated BP
20 needs MD recheck." Respondent signed the form as the medical reviewing officer. In the
21 "Respiratory Compliance" box on the form, it indicates "no medical restrictions on respirator
22 use." Ms. Garcia also completed on 6/08/1999, the IOSM OSHA Respirator Medical Evaluation
23 Questionnaire for this employee. This medical evaluation was signed by Ms. Siegel, indicating
24 that she was the "health care professional" who did the review. Respondent never met or
25 observed this employee and there is no documentation indicating a follow-up with this employee
26 about a re-check of his blood pressure.

189. On or about 6/10/1999, technician R. Moore conducted a medical evaluation and apparently administered a spirometry test to employee Jesse G. of employer American Instrument. For this employee, the technician completed and signed a form "Respirator Use Medical Exam" in which the findings and conclusions indicate "mild obstruction." Respondent signed the form as the medical reviewing officer. In the "Respiratory Compliance" box on the form, there is a handwritten comment: "specific medical restrictions: 4 hr. limit on respirator." Also on 6/10/1999, an unidentified technician, presumably Mr. Moore, completed the Spirometry Report, which respondent did not sign as having reviewed. In the report, it states that testing indicates "mild restriction." The technician also completed on 6/10/1999, the IOSM OSHA Respirator Medical Evaluation Questionnaire for this employee in which it states that the employee Jesse G. "would like to talk to the health care professional who will review the questionnaire." This medical evaluation was signed by Ms. Siegel, indicating that she was the "health care professional" who did the review. Respondent never met or observed this employee and there is no documentation indicating a follow-up with this employee about his desire to talk with the reviewing health care professional and about the medical restrictions on respirator use.

190. On or about 6/10/1999, technician R. Moore conducted a medical evaluation and apparently administered a spirometry test to employee Loc N. of employer American Instrument. For this employee, the technician completed and signed a form "Respirator Use Medical Exam" in which the findings and conclusions indicate "Elevated BP needs MD recheck." Respondent signed the form as the medical reviewing officer. In the "Respiratory Compliance" box on the form, it states: "No medical restrictions on respirator use." Also on 6/10/1999, an unidentified technician, presumably Mr. Moore, completed the Spirometry Report, which respondent did not sign as having reviewed. In the report, it states that testing indicates "normal spirometry." The technician also completed on 6/10/1999, the IOSM OSHA Respirator Medical Evaluation Questionnaire for this employee, which was signed by Ms. Siegel, indicating that she was the "health care professional" who did the review. Respondent never met

1 or observed this employee and there is no documentation indicating a physician follow-up with
2 this employee about his elevated blood pressure.

3 191. On or about 6/14/1999, technician Ms. Zulema Garcia conducted a
4 medical evaluation and apparently administered a spirometry test to employee Mark R. of
5 employer Babcock & Wilcox. For this employee, Ms. Garcia completed and signed a form
6 "Respirator Use Medical Exam" in which the findings and conclusions indicate a "mild
7 obstruction" and that the "employee has been informed of increased risk of lung cancer attributed
8 to the combined effect of smoking and potential exposure." Respondent signed the form as the
9 medical reviewing officer. In the "Respiratory Compliance" box on the form, it indicates "no
10 medical restrictions on respirator use." Also on 6/14/1999, an unidentified technician,
11 presumably Ms. Garcia, completed the Spirometry Report, which respondent signed as having
12 reviewed. In the report, it states that testing indicates a lung age of 82 years for a 48-year-old
13 male and "normal spirometry" but "normal spirometry" is crossed out with "mild obstruction"
14 handwritten in its place. Ms. Garcia also completed on 6/14/1999, the IOSM OSHA Respirator
15 Medical Evaluation Questionnaire for this employee, which states that he has had, among other
16 things, "asbestosis, asthma, chronic bronchitis, emphysema, collapsed lung, and currently has
17 shortness of breath and coughing and wheezing." This medical evaluation was signed by Ms.
18 Siegel, indicating that she was the "health care professional" who did the review. There is also an
19 IOSM "Qualitative Respirator Fit" form filled out by Ms. Garcia, indicating that employee Mark
20 R. was fitted for use of a respirator. Respondent never met or observed this employee and there
21 is no documentation indicating a follow-up with this employee about the "mild obstruction."

22 192. On or about June 28, 1999, technician Mary Welton conducted a medical
23 evaluation and apparently administered a spirometry test to employee Philip B. of employer
24 Robison-Prezioso Inc.. For this employee, technician Welton completed and signed the IOSM
25 OSHA Respirator Medical Evaluation Questionnaire in which it states that the employee Philip
26 B. "would like to talk to the health care professional who will review the questionnaire." The
27 questionnaire was signed by Ms. Siegel, indicating that she was the "health care professional"

1 who did the review. There is also an IOSM "Qualitative Respirator Fit" form, signed by Ms.
2 Siegel as the examiner, indicating that employee Philip B. was fitted for use of a respirator. For
3 this employee, Ms. Siegel completed and signed a form "Respirator Use Medical Exam" in which
4 the findings and conclusions indicate "no detected medical condition which would place that
5 employee at increased risk of material impairment of health" and that the "employee has been
6 informed of increased risk of lung cancer attributed to the combined effect of smoking and
7 potential exposure." In the "Respiratory Compliance" box on the form, it indicates "no medical
8 restrictions on respirator use." Respondent never met or observed this employee yet he signed
9 the form as the medical reviewing officer. There is no documentation indicating a follow-up with
10 this employee by the health care professional who reviewed the questionnaire.

11 193. On or about 7/27/1999, technician Mary Welton conducted a medical
12 evaluation and apparently administered a spirometry test to employee Ney A. of employer Bay
13 Ship & Yacht. For this employee, technician Welton completed and signed a form "Respirator
14 Use Medical Exam" in which the findings and conclusions indicate "moderate obstruction" with
15 a handwritten note of "high frequency loss." The form also indicates that "employee has been
16 informed of increased risk of lung cancer attributed to the combined effect of smoking and
17 potential exposure." Respondent signed the form as the medical reviewing officer. In the
18 "Respiratory Compliance" box on the form, it states: "Specific medical restrictions: 4 hr. limit on
19 respirator." Also on 7/27/1999, an unidentified technician, presumably Ms. Welton, completed
20 the Spirometry Report, which respondent signed as having reviewed. In the report, the statement
21 that "testing indicates normal spirometry" is crossed out and there is stamped "moderate
22 obstruction." The technician also completed on 7/27/1999, the IOSM OSHA Respirator Medical
23 Evaluation Questionnaire for this employee, which was signed by Ms. Siegel, indicating that she
24 was the "health care professional" who did the review. There is also an IOSM "Qualitative
25 Respirator Fit" form filled out by Ms. Siegel, indicating that employee Ney A. was fitted for use
26 of a respirator. There are also two IOSM forms signed by Ms. Siegel on 7/27/1999 stating that
27 Bay Ship and Yacht Co. employee Ney A. completed training programs for respiratory protection

1 and for hearing conservation. Respondent never met or observed this employee and there is no
2 documentation indicating a follow-up with this employee about the medical restrictions on
3 respirator use.

4 194. On or about 8/16/1999, technician R. Moore conducted a medical
5 evaluation and apparently administered a spirometry test to employee Ron M. of employer
6 Certified Coating. For this employee, the technician completed and signed a form "Respirator
7 Use Medical Exam" in which the findings and conclusions indicate "Elevated BP needs MD
8 recheck." Respondent signed the form as the medical reviewing officer. In the "Respiratory
9 Compliance" box on the form, it states: "No medical restrictions on respirator use." Also on
10 8/16/1999, an unidentified technician, presumably Mr. Moore, completed the Spirometry Report,
11 which respondent did not sign as having reviewed. In the report, it states that testing indicates
12 "normal spirometry." The technician also completed on 8/16/1999, the IOSM OSHA Respirator
13 Medical Evaluation Questionnaire for this employee, which was signed by Ms. Siegel, indicating
14 that she was the "health care professional" who did the review. Respondent never met or
15 observed this employee and there is no documentation indicating a physician follow-up with this
16 employee about his elevated blood pressure.

17 195. On or about 8/19/1999, technician Mary Welton conducted a medical
18 evaluation and apparently administered a spirometry test to employee Anthony L. of employer
19 Balfour Beatty. For this employee, Ms. Welton completed and signed a form "Respirator Use
20 Medical Exam" in which the findings and conclusions indicate a "moderate obstruction" and that
21 the "employee has been informed of increased risk of lung cancer attributed to the combined
22 effect of smoking and potential exposure." Respondent signed the form as the medical reviewing
23 officer. In the "Respiratory Compliance" box on the form, it indicates "specific medical
24 restrictions: 4 hr. limit on respirator." Also on 8/19/1999, an unidentified technician, presumably
25 Ms. Welton, completed the Spirometry Report, in which it finds that the lung age of the 44-year-
26 old male is "80 years" and that "testing indicates mild restriction." Respondent did not sign the
27 report as having been reviewed. Ms. Welton also completed on 8/19/1999, the IOSM OSHA

1 Respirator Medical Evaluation Questionnaire for this employee. This medical evaluation was
2 signed by Ms. Siegel, indicating that she was the "health care professional" who did the review.
3 There is also an IOSM "Qualitative Respirator Fit" form filled out by Ms. Welton, indicating that
4 employee Anthony L. was fitted for use of a respirator. Respondent never met or observed this
5 employee and there is no documentation indicating a follow-up with this employee about the
6 "moderate obstruction" and/or the medical restrictions on his respirator use.

7 196. On or about 11/30/1999, technician Mary Welton conducted a medical
8 evaluation and apparently administered a spirometry test to employee Edison R. of employer
9 Christie Construction. For this employee, technician Welton completed and signed a form
10 "Respirator Use Medical Exam" indicating a "mild obstruction" and that "employee has been
11 informed of increased risk of lung cancer attributed to the combined effect of smoking and
12 potential exposure." Respondent signed the form as the medical reviewing officer. In the
13 "Respiratory Compliance" box on the form, it indicates "no medical restrictions on respirator
14 use." Also on 11/30/1999, an unidentified technician, presumably Ms. Welton, completed the
15 Spirometry Report, which respondent did not sign as having reviewed. In the report, it states that
16 "Testing indicates borderline obstruction" and that the lung age is 63 years for a 40-year-old
17 male. Technician Welton also completed on 11/30/1999, the IOSM OSHA Respirator Medical
18 Evaluation Questionnaire for this employee, which states that "Have expert review: indicates
19 currently has coughing that produces phlegm, has coughed up blood in the last month, and
20 currently has weakness in his arms, hands, legs or feet." This medical evaluation was signed by
21 Ms. Siegel, indicating that she was the "health care professional" who did the review. There is
22 also an IOSM "Qualitative Respirator Fit" form filled out by technician Welton, indicating that
23 employee Edison R. was fitted for use of a respirator. Respondent never met or observed this
24 employee and there is no documentation indicating a follow-up with this employee and/or a
25 physician review of the evaluation.

26 197. On or about 12/02/1999, technician Mary Welton conducted a medical
27 evaluation and apparently administered a spirometry test to employee Robert D. of employer

1 PMI. For this employee, technician Welton completed and signed a form "Respirator Use
2 Medical Exam" in which the findings and conclusions indicate a "moderate obstruction" and
3 "elevated BP needs MD recheck." Respondent signed the form as the medical reviewing officer.
4 In the "Respiratory Compliance" box on the form, it indicates "Specific medical restrictions: 4
5 hour limit on respirator." On the form, there is also a handwritten note at the bottom: "Notified
6 Doris 12/8 and faxed ZG." Also on 12/02/1999, an unidentified technician, presumably Ms.
7 Welton, completed the Spirometry Report, which respondent did not sign as having reviewed. In
8 the report, it states that testing indicates "normal spirometry." Technician Welton also completed
9 on 12/02/1999, the IOSM OSHA Respirator Medical Evaluation Questionnaire for this employee.
10 This medical evaluation was signed by Ms. Siegel, indicating that she was the "health care
11 professional" who did the review. The medical evaluation form also states: "Have expert review:
12 indicates he had a PFT within the last three years and was told could not use a respirator."
13 Respondent never met or observed this employee and there is no documentation indicating a
14 follow-up with this employee for expert review.

15 198. On or about 12/20/1999, technician Mary Welton conducted a medical
16 evaluation and apparently administered a spirometry test to employee Phil R. of employer
17 Robison-Prezioso Inc.. For this employee, Ms. Welton completed and signed a form "Respirator
18 Use Medical Exam" in which the findings and conclusions indicate no significant problems found
19 but that the "employee has been informed of increased risk of lung cancer attributed to the
20 combined effect of smoking and potential exposure." Respondent signed the form as the medical
21 reviewing officer. In the "Respiratory Compliance" box on the form, it indicates "no medical
22 restrictions on respirator use." Also on 12/20/1999, an unidentified technician, presumably Ms.
23 Welton, conducted the spirometry test, in which it finds that the "testing indicates borderline
24 obstruction." Respondent did not sign the test report as having been reviewed. Ms. Welton also
25 completed on 12/20/1999, the IOSM OSHA Respirator Medical Evaluation Questionnaire for this
26 employee. This medical evaluation was signed by Ms. Siegel, indicating that she was the "health
27 care professional" who did the review. There is also an IOSM "Qualitative Respirator Fit" form

1 filled out by Ms. Welton, indicating that employee Phil R. was fitted for use of a respirator.
2 Respondent never met or observed this employee.

3 **Blood Lead Level (BLL) testing**

4 199. On or about December 31, 1997 a "Lead Reporting Form" was filled out
5 for patient J.A.^{5/} The form indicated that the physician requesting the test was "Virginia Siegel."
6 The form was sent to the Department of Health Services of the State of California. Likewise, on
7 or about December 31, 1997 a "Lead Reporting Form" was filled out for patient G.S. The form
8 indicated that the physician requesting the test was "Virginia Siegel." The form was sent to the
9 Department of Health Services of the State of California. Lastly, on or about December 3, 1997 a
10 "Lead Reporting Form" was filled out for patient J.S. The form indicated that the "physician
11 requesting the test was Virginia Siegel." The form was sent to the Department of Health Services
12 of the State of California.

13 200. In April, May, July, September, October, and November 1999, blood lead
14 level test results were sent to IOSM for employee Anthony L. of employer Balfour Beatty from
15 the laboratory ARUP. The test result form identifies the referring physician as "Balfour." There
16 is no documentation that respondent, or any other licensed physician, reviewed the test results or
17 that the results were reported to the employee and employer.

18 201. On or about 8/20/1999, blood lead level test results were sent to IOSM for
19 employee Ron M. of Certified Coating Company from the laboratory ARUP. The test result form
20 identifies the referring physician as "CCC" and states that "appears that worker should be notified
21 and removed from job because of high BLL." There is no documentation that respondent
22 reviewed the test results or that the test results were reported to the employee and employer.

23 202. Between August 30, 2000 and September 12, 2000, the Occupational Lead
24 Poisoning Prevention Program ("OLPPP") of the California Department of Health Services
25
26

27 5. Patients will be identified by initials in this accusation in order to preserve privacy.
The full names of patients will be disclosed upon a proper request for discovery.

1 received "Lead Reporting Forms" in which respondent is identified as the physician requesting
2 the blood lead level test, which was performed by Pacific Toxicology Laboratories, as follows:

3 a. Employee Rick C. of employer Christie Construction, sample taken
4 7/22/2000;

5 b. Employee Darrell B. of employer Balfour & Beatty, sample taken on
6 7/27/2000;

7 c. Employee Rick C. of employer Christie Construction, sample taken on
8 8/4/2000;

9 d. Employee Arthur M. of employer Robison-Prezioso, Inc., sample taken on
10 8/30/2000 which showed a blood lead level of 185.4 and a zinc protoporphyrins (ZPP) level of
11 18, when any lead level over 40 is reportable to the OLPPP. The actual laboratory test report for
12 Arthur M. which was sent to OLPPP indicates that the test results were sent to IOSM to the
13 attention of "Lois Sims" and respondent's name does not appear on the test report.

14 e. Employee Frank W. of employer Robison-Prezioso, blood sample taken on
15 8/31/2000, indicating a blood lead level of 39.1.

16 f. Employee Jackie W. of employer Robison-Prezioso, Inc., blood sample
17 taken on 8/31/2000.

18 g. Employee Richard P. of employer Robison Prezioso, Inc., blood sample
19 taken on 8/31/2000.

20 h. Employee Adam T. of employer Robison-Prezioso, Inc., blood sample
21 taken on 8/31/2000.

22 i. Employee K.E. of employer Robison-Prezioso, Inc., blood sample taken
23 on 9/1/2000.

24 j. The OLPPP also received blood lead level test reports done by Pacific
25 Toxicology Laboratories for employee Rick C. of Christie Construction (blood sample taken on
26 9/09/2000) and employee David D. of Robison-Prezioso, Inc. (blood sample taken on
27 08/02/2000) which were originally sent to IOSM to the attention of "Lois Sims", not respondent.

1 Respondent did not perform nor did he supervise the blood draw on these
2 identified employees. It is undocumented whether respondent reviewed the laboratory test results
3 on the blood lead level tests.

4 Other Acts/Omissions

5 203. On or about 5/28/1999, IOSM technician Michael McBride completed a
6 "Visual Acuity Record" for employee Ben M. of employer PMI in which he certified that he
7 administered an eye examination. Respondent's signature appears on the document as the
8 medical doctor. The form states that the test must be administered by an optometrist, medical
9 doctor, registered nurse, or certified physicians' assistant. Respondent did not administer the test
10 to this employee and technician McBride was not qualified to administer the examination.

11 204. On or about 10/5/1999, Ms. Virginia Siegel sent a letter on IOSM
12 letterhead to employer Underground Construction Co., Inc. in Benicia regarding the physical
13 examination of their employee Bradley W.. Ms. Siegel identified herself as "MICP, OHT." In
14 the letter, Ms. Siegel reported the results of "our examination of the above patient", which in part
15 includes that: "X-rays demonstrate that he has healed fractures of the left 6th and 7th lateral ribs
16 and 'healing' fractures on the right side at the 5th, 6th and 7th lateral ribs," and "[p]hysical
17 examination reveals no obvious deformity, crepitus or contusions. Range of motion is within
18 normal limits and without pain. Patient complains of slight pain with palpation at the left chest."
19 She concludes: "It is reasonable to assume that the existence of these fractures is the reason for
20 the pain and soreness when working with a jackhammer or when doing heavy lifting. It appears
21 that the injury that caused the fractures took place some time ago and so therefore is healed or
22 almost healed. We have no indication that this took place at work. We recommended to the
23 patient that he return to his personal physician for light duty instructions and, when appropriate,
24 permission to return to work." Respondent signed the letter as having reviewed it but it is unclear
25 whether it was reviewed before or after it was sent. There is no indication that Respondent ever
26 examined or otherwise observed this patient.

1 205. On or about 11/17/1999, respondent, as the IOSM medical review officer,
2 sent a letter to employee Bill C. of employer Long Painting in which respondent informed the
3 patient of the results of the Cadmium Exposure Panel done on 10/03/1999. Respondent states
4 that the test showed "no cadmium physiological effects are present" and encloses a copy of the
5 test results. The referring physician on the ARUP Laboratories report is identified as "Long."
6 There is no indication that Respondent ever examined or otherwise observed this patient.

7
8 **FIRST CAUSE FOR DISCIPLINARY ACTION**
9 **(Business and Professions Code Sections 2234 unprofessional conduct and**
10 **2264 aiding and abetting unlicensed practice)**

11 206. Respondent's conduct, as set forth in paragraphs 98 through 205
12 incorporated herein by reference, constitutes general unprofessional conduct in the practice of his
13 profession in violation of Business and Professions Code section 2234, and thereby constitutes
14 grounds for disciplinary action against his license under this section and in conjunction with
15 Business and Professions Code section 2264 and/or with California Code of Regulations sections
16 1360 and 1532.1.

17 207. More specifically, respondent committed the following acts or omissions:

18 A. Respondent either knew or should have known that his employment as an
19 independent contractor to a nonprofessional medical corporation owned and/or operated by
20 unlicensed physicians, in which the primary purpose of the corporation was to engage in the
21 medical evaluation of industrial employees for compliance with occupational health and safety
22 laws and regulations, constituted the aiding and abetting of the unlicensed practice of medicine;
23 and/or

24 B. Respondent either knew and/or should have known that none of the
25 employees of IOSM was a licensed health care provider and/or were licensed paramedics
26 functioning outside their scope of practice. Consequently, none of these individuals could
27 independently and without direct physician supervision provide the following medical services:
perform medical physical evaluations; engage in invasive medical procedures such as performing

1 venipuncture; inoculate persons with dangerous drugs; perform pulmonary function testing such
2 as spirometry; perform audiograms; render a diagnosis; make clinical evaluation assessments; and
3 have custody and control of dangerous drugs; and/or

4 C. Respondent knew and/or should have known that unlicensed persons
5 and/or licensed paramedics could not have custody and control of patient medical records; and/or

6 D. Respondent either knew and/or should have known that unlicensed
7 persons and/or licensed paramedics could not decide what medical equipment needed to be
8 purchased in order to function as a provider of medical services; and/or

9 E. Respondent knew and/or should have known that unlicensed persons
10 and/or licensed paramedics functioning outside their scope of practice could not determine what
11 diagnostic tests are appropriate for a particular condition; and/or

12 F. Respondent either knew or should have known that unlicensed persons
13 and/or licensed paramedics functioning outside their scope of practice could not determine the
14 need for referrals to or consultations with another physician/specialist; and/or

15 G. Respondent either knew or should have known that unlicensed persons
16 and/or licensed paramedics functioning outside their scope of practice could not determine the
17 scope and content of a patient's medical record; and/or

18 H. Respondent either knew or should have known that the responsibility for
19 the overall medical care and evaluation of a patient rests with licensed physicians and not with
20 unlicensed individuals who are not directly supervised and appropriately trained by the physician
21 and/or by licensed paramedics functioning outside their scope of practice.

22 208. As alleged more particularly herein, respondent is subject to disciplinary
23 action pursuant to sections 2234 and 2264 of the Code for his aiding and abetting of the
24 unlicensed practice of medicine.

25 ///

26 ///

27 ///

SECOND CAUSE FOR DISCIPLINARY ACTION
**(Business and Professions Code Sections 2234 unprofessional conduct and
2286 The Moscone-Knox Professional Corporation Act)**

209. Respondent's actions, as set forth in paragraphs 98 through 205 incorporated herein by reference, constitute general unprofessional conduct in the practice of his profession in violation of sections 2286 and 2234 of the Business and Professions Code, and thereby constitutes grounds for disciplinary action against his license under these sections in conjunction with California Code of Regulations section 1360.

210. More specifically, respondent committed the following acts or omissions:

A. Respondent either knew or should have known that general corporations and/or other artificial legal entities have no professional rights to practice the medical profession. In particular respondent either knew or should have known that only professional medical corporations may practice medicine; and/or

B. Respondent either knew and or should have known that only a medical corporation can render professional medical services, and then only so long as its owners, shareholders, directors and employees rendering professional services are licensed physicians, psychologists, registered nurses, optometrists, and/or podiatrists; and/or

C. Respondent either knew or should have known that Industrial Health & Safety, Inc., doing business as Industrial On-Site Medics, was not a professional corporation that was owned and controlled by properly licensed health care professionals. He either knew or should have known this because, in part, the corporation did not have a Fictitious Name Permit issued by the Medical Board of California for the use of the name, Industrial On-Site Medics, Inc.; and/or

D. Respondent either knew or should have known that Industrial Health & Safety, Inc., doing business as Industrial On-Site Medics, was not properly incorporated in part because the corporation used his professional medical license to order dangerous drugs and other medical supplies; and/or

1 E. Respondent either knew or should have known that Industrial On-Site
2 Medics was in violation of the prohibition against the general corporate practice of medicine in
3 part because he knew or should have known that the employees of the corporation were either not
4 licensed by the State of California in any of the health professions, and/or that they were licensed
5 as paramedics but providing service outside of their permitted scope of practice and/or that all of
6 Industrial On-Site Medics' personnel were not properly trained and supervised by him to perform
7 independently the following medical services: medical examinations; spirometry; audiograms;
8 venipuncture; and the administration of dangerous drugs; and/or

9 F. Respondent either knew or should have known that Industrial On-Site
10 Medic's control over the operation of its industrial testing program was consistently involved in
11 the making of decisions which bear both directly and indirectly upon the practice of medicine.
12 Such decisions, made either by Virginia Siegel and/or Zulema Garcia, have included, but are not
13 limited to the following: (1) Preparing and submitting employee medical evaluations for lead
14 exposure and for respiratory fitness to wear a respirator; (2) Determining the type and quality of
15 medical facilities, equipment, and supplies to provide for its provision of medical services; (3)
16 Setting fees for the provision of medical services, determining physician compensation, and
17 billing procedures; (4) Establishing medical practices through the creation and training of its
18 employees in the use of the corporation's "Standard Operating Procedures and Reference
19 Manual"; (5) Regulating patient referrals to respondent when the patient did not have a personal
20 physician; and (6) Administering vaccinations and performing venipuncture for blood lead level
21 testing; and/or

22 G. Respondent either knew or should have known that Industrial On-Site
23 Medics does not qualify as a professional corporation under the provisions of the Moscone-Knox
24 Professional Corporation Act (Corporations Code section 134000, et seq.) because it has failed to
25 comply with sections 2264, 2285, 2400, 2410, 2415(b)(1)(2), Corporations Code sections
26 13408(d), (e), (f), 13408.5 and 13410(a), in that the California corporation is totally "owned and
27 controlled" by Virginia Siegel and Zulema Garcia, neither of whom are a licensed California

1 physician and surgeon. Consequently Industrial On-Site Medics is not exempt from the
2 prohibition against the corporate practice of medicine under Business and Professions Code
3 section 2402 because it does not qualify as a professional corporation under the provisions of the
4 Moscone-Knox Professional Corporation Act. As an artificial legal entity not owned and/or
5 controlled by respondent or other State of California licensed health care professionals, the
6 California corporation falls within the prohibition against the corporate practice of medicine under
7 Business and Professions Code section 2400.

8 211. As alleged more particularly herein, respondent is subject to disciplinary
9 action pursuant to sections 2234 and 2286 of the Code because of his employment and
10 involvement with an unqualified corporation providing medical services in violation of the
11 prohibitions against the general corporate practice of medicine.

12 **THIRD CAUSE FOR DISCIPLINARY ACTION**
13 **(Business and Professions Code Sections 2234, 2238, 4022, 4040,**
14 **4081, 4170: Unprofessional Conduct/**
15 **Violation of Federal or State Statutes Regulating Dangerous Drugs)**

16 212. Respondent's conduct, as set forth in paragraphs 98 through 205
17 incorporated herein by reference, constitute general unprofessional conduct in the practice of his
18 profession in violation of sections 2238 and 2234, in that respondent violated state and federal
19 statutes and/or regulations pertaining to dangerous drugs by failing to dispense drugs without a
20 proper accounting and a sufficient recording of patient information, in violation of Business and
21 Professions Code sections 4022, 4040, 4081 and/or 4170. His license is therefore subject to
22 disciplinary action under the above noted sections in conjunction with California Code of
23 Regulations section 1360.

24 213. More specifically, respondent committed the following acts or omissions:

25 A. Respondent either knew or should have known that his medical license
26 certificate and/or his DEA (Drug Enforcement Administration) certificate was being used by the
27 owners and/or management of Industrial Health & Safety, Inc., doing business as Industrial On-
Site Medics to order and pay for dangerous drugs ; and/or

1 B. Respondent permitted management service staff to store dangerous drugs
2 and to maintain all records of their use and disposition; and/or

3 C. Respondent either knew or should have known that dangerous drugs were
4 being ordered under his name and continued to be administered by unlicensed employees of
5 Industrial Safety and Health, Inc. and that all vaccines were shipped by the supplier to the
6 Industrial Safety and Health, Inc. mailing address of 5100-1B Clayton Road, #326, which is the
7 local office of Mailboxes, etc. The invoices show the name "Hugh H. Wang, M.D." for that
8 address, but the drugs are ordered and paid for by Industrial Safety and Health.

9 D. Respondent either knew or should have known that dangerous drugs were
10 not being properly locked, inventoried, and dispensed by unlicensed employees of Industrial
11 Safety and Health, Inc.; and/or,

12 E. Respondent allowed the management staff to control all documentation of
13 the dispensing of dangerous drugs to patients; and/or

14 F. Respondent did not have any patient contact and just "signed off" on
15 forms. He therefore knew or should have known that dangerous drugs were being administered to
16 patients without a good faith medical evaluation having been conducted by a licensed physician or
17 other appropriately supervised medical assistant.

18 214. As alleged more particularly herein, respondent is subject to disciplinary
19 action pursuant to sections 2234, 2238, 4022, 4040, 4081, and/or 4170 in that respondent violated
20 state and federal statutes and/or regulations pertaining to dangerous drugs.

21 **FOURTH CAUSE FOR DISCIPLINARY ACTION**
22 **(Business and Professions Code Sections 2234, 2238, 2242, 4170: Unprofessional Conduct/
23 Dispensing or Furnishing Dangerous Drugs without
24 Prior Examination and Medical Indication)**

25 215. Respondent's conduct, as set forth in paragraphs 98 through 205
26 incorporated herein by reference, constitutes general unprofessional conduct in violation of
27 sections 2242, 2234, 2238, and/or 4170 in that he allowed unlicensed and unsupervised
individuals to dispense and/or administer dangerous drugs without a good faith prior medical

1 examination and medical indication therefor. His license is therefore subject to disciplinary
2 action, in conjunction with California Code of Regulations section 1360.

3 **FIFTH CAUSE FOR DISCIPLINARY ACTION**
4 **(Business and Professions Code Sections 2234, 2266, 4081, 4170, CCR 1366 & 1366.2**
5 **Inadequate and/or Inaccurate Medical Records)**

6 216. Respondent's conduct, as set forth in paragraphs 98 through 205
7 incorporated herein by reference, constitutes unprofessional conduct pursuant to Business and
8 Professions Code Sections 2234, 2266, 4081, 4170, and/or California Code of Regulations
9 sections 1366 and/or 1366.2 and thereby constitutes grounds for disciplinary action against his
10 license.

11 217. More specifically, respondent committed the following acts or omission:

12 A. Respondent failed to maintain custody and control of patient medical
13 records. He allowed unlicensed persons and/or licensed paramedics functioning outside their
14 scope of practice at IOSM to keep confidential patient records; and/or

15 B. Respondent failed to create adequate medical records of patients being
16 medically evaluated for lead exposure, for respirator fitness evaluations, and/or for noise exposure
17 by using preprinted forms created by IOSM which did not allow for the taking of a complete
18 medical history of the patient and/or failed to allow for a complete clinical review and
19 documentation of systems, and which at times totally ignored the medical questions required by
20 OSHA regulations;

21 C. Respondent allowed the use of preprinted forms created by IOSM which
22 failed to document the name of the patient to whom the particular report belonged, and/or also
23 failed to identify the person who performed the examination and/or test and failed to ensure their
24 qualifications and proper licensure to perform said exams and tests independent of physician
25 direct supervision; and/or

26 D. Respondent failed to maintain adequate records of the acquisition and
27 disposition of dangerous drugs administered by IOSM technicians to clients' employees.

1 218. As alleged more particularly herein, respondent is therefore subject to
2 disciplinary action under the above noted sections in conjunction with California Code of
3 Regulations section 1360 for his inadequate and/or inaccurate medical records and/or for his
4 failure to maintain adequate prescribing records.

5 **SIXTH CAUSE FOR DISCIPLINARY ACTION**
6 **(Business and Professions Code Section 2263-**
7 **Violation of Professional Confidence)**

8 219. Respondent's conduct, as set forth in paragraphs 98 through 205
9 incorporated herein by reference, constitutes general unprofessional conduct pursuant to Business
10 and Professions Code Sections 2234, subdivision(a) and/or Section 2263, and/or a violation of
11 California Code of Regulations section 1532.1(j)(3)(E). His license is therefore subject to
12 disciplinary action under the above noted sections in conjunction with California Code of
13 Regulations section 1360.

14 220. More specifically, respondent committed the following acts or omissions:

15 A. Respondent either knew or should have known that he violated
16 professional confidence by permitting patient medical records to be kept under the control of
17 IOSM and/or Virginia Siegel and/or Zulema Garcia neither of whom had the legal responsibility
18 to retain control of patient medical records; and/or

19 B. Respondent either knew or should have known that by allowing unlicensed
20 persons and/or licensed paramedics functioning outside their scope of practice to have control of
21 patient medical records in a non-licensed professional medical corporation, that breaches of
22 patient medical record confidentiality were likely to occur and/or in fact occurred; and/or

23 C. Respondent either knew or should have known that letters and/or reports
24 were sent by IOSM technicians to patients/employees, with copies to employers entitled "Physical
25 Examination" or "Respirator Use Medical Examination," which contained and disclosed
26 confidential medical information about the patient/employee.
27

SEVENTH CAUSE FOR DISCIPLINARY ACTION
(Business and Professions Code Sections 2234, 2234(e), 2261, 2070, 651:
Making of a false medical document)

221. Respondent's conduct, as set forth in paragraphs 98 through 205 incorporated herein by reference, constitutes general unprofessional conduct in that he knowingly signed documents that were indirectly and/or directly related to the practice of medicine which falsely represented the existence or nonexistence of a state of facts in violation of Business and Professions Code Sections 2261, 2262, 2070, 651, and/or committed acts involving dishonesty or corruption which are substantially related to the qualifications, functions, or duties of a physician and surgeon in violation of section 2234(e).

222. More specifically, respondent committed the following acts or omissions:

A. Respondent signed "Doctor's First Report of Occupational Injury or Illness" forms for IOSM pertaining to patients/employees which falsely give the impression that respondent performed the physical examination and performed the clinical diagnostic tests which are listed on the form. This is in fact not the case because respondent never saw the patient/employee; and/or

B. Respondent signed, as the IOSM "Medical Reviewing Officer," "Respirator Use Medical Exam" forms pertaining to patients/employees which indicated falsely that, "This is to certify that the above named employee has been examined in accordance with CAL OSHA rules CCR Title 8 Section 5144 for respirator use" and which contained medical findings and conclusions. Boxes were then checked which represented that the examined patient/employee had a medical history and physical examination, and a pulmonary function test completed. The impression that respondent performed the physical examination of this patient is false because respondent never saw the patient. Furthermore the medical statements made on the form are false because CAL-OSHA requires that medical examinations and procedures be performed by a licensed physician, or under his or her direct supervision, or alternatively by licensed health care providers who may perform such examinations or evaluations independent of a physician. None of these circumstances existed.; and/or

1 C. Respondent signed, as having reviewed, IOSM "Physical Examination"
2 letters addressed to the patient/employee and to his/her employer. The letter were signed by
3 Virginia Siegel and, in part, discloses medical information regarding blood lead tests and urine
4 test results. This letter is a false medical record because respondent never examined the
5 patient/employee. Nor is Virginia Siegel or any other employee of IOSM authorized by law to
6 perform any of the tests or examinations that are listed in the letter because they are not
7 independently licensed to perform these medical services, independent of a physician. In addition,
8 respondent did not personally supervise the performance of any of the medical procedures
9 performed on the patient. None of the individuals employed by IOSM are medical assistants as
10 defined by Business and Professions Code Section 2069. No specific written authorization or
11 standing physician order exists in the medical records provided for the patient which demonstrates
12 that respondent ordered a medical assistant to perform any medical service to this patient. No
13 medical record exists that respondent trained any medical assistant in the performance of any
14 technical supportive medical service. Lastly, respondent was never physically present in the
15 treatment or examination area where any of the medical examinations or evaluation procedures
16 were performed on the patient; and/or

17 D. Respondent signed, as having reviewed, IOSM "Occupational Lead
18 Exposure Questionnaire and Examination" forms pertaining to patients/employees. This
19 document, in part, records medical information regarding physical examination results of the
20 patient/employee. This document constitutes the creation of a false medical record because
21 respondent never examined the patients. Nor is Virginia Siegel or any other employee of IOSM
22 authorized by law to perform any of the tests or examinations that are listed on the document
23 because they are not independently licensed to perform these medical services independent of a
24 physician. In addition, respondent did not personally supervise the performance of any of the
25 medical procedures performed on the patients. None of the individuals employed by IOSM are
26 medical assistants as defined by Business and Professions Code Section 2069. No specific written
27 authorization or standing physician order exists in the medical records provided for the patients

1 which demonstrates that respondent ordered a medical assistant to perform any medical service to
2 this patient. No medical record exists that respondent trained any medical assistant in the
3 performance of any technical supportive medical service. Lastly, respondent was never physically
4 present in the treatment or examination area where any of the medical examinations or evaluation
5 procedures were performed on the patient; and/or

6 E. The IOSM form "OSHA Respirator Medical Evaluation Questionnaire, per
7 OSHA Rules and Regulations Appendix C to 1910.134" indicates that the evaluation will be
8 reviewed only by a health care professional. The form asks for information about personal
9 medical history and also provides for evaluations by the "medical review officer" of the
10 patient/employee's blood pressure, pulse, respiration, and lung sounds. Respondent, however, did
11 not review this form evaluation. It was always reviewed by Ms. Siegel, who is not a physician or
12 other licensed health care professional; and/or

13 F. Respondent signed, as having reviewed, IOSM "Audiometry Result Form"
14 in which the technician performing the test evaluated the patient/employee's hearing and
15 diagnosed hearing loss and/or ear infections. Respondent, however, never met or observed the
16 patients/employees and was not present during the testing. Nor did respondent follow-up on any
17 of the examination results or any of the recommendations; and/or

18 G. Respondent signed CDC form 7354 "TB Infectious Free Staff Certificate"
19 for patients/employees in which respondent certified that they were free of tuberculosis.
20 Respondent, however, did not administer the tests and never met or observed the
21 patients/employees. The tests were given by an IOSM technician, unlicensed and unauthorized to
22 administer such tests. Yet, respondent certified in CDC form 7354 that he evaluated these
23 patients and that the evaluation was done by a physician and surgeon; and/or

24 H. Respondent is identified as the physician requesting the blood lead level
25 test in the "Lead Reporting Forms" sent by IOSM to the Occupational Lead Poisoning Prevention
26 Program ("OLPPP") of the California Department of Health Services. The actual laboratory test
27 results performed by Pacific Toxicology Laboratories were sent to IOSM to the attention of "Lois

1 Sims," not to respondent. Respondent did not perform, nor did he supervise, the blood draw on
2 the employees. It is undocumented whether respondent reviewed the laboratory test results on the
3 blood lead level tests before sent to OLPPP; and/or,

4 I. Respondent's signature appears, as the medical doctor, on a "Visual Acuity
5 Record" for employee Ben M. of employer PMI in which respondent certified that he
6 administered an eye examination. The form states that the test must be administered by an
7 optometrist, medical doctor, registered nurse, or certified physicians' assistant. Respondent,
8 however, did not administer the eye test to this employee and the technician who did perform the
9 test was not qualified to administer the examination.

10 223. As alleged more particularly herein, respondent's license is therefore
11 subject to disciplinary action under the above noted section and/or sections, in conjunction with
12 California Code of Regulations section 1360, for the making or signing of documents related to
13 the practice of medicine which falsely represent the existence or nonexistence of a state of facts.

14 **EIGHTH CAUSE FOR DISCIPLINARY ACTION**
15 **(Business and Professions Code Sections 2234, 2234(e), and 2262**
16 **Creation of False Medical Record)**

17 224. Respondent's conduct, as set forth in paragraphs 98 through 205
18 incorporated herein by reference, constitutes general unprofessional conduct in that he knowingly
19 created false medical records with fraudulent intent pursuant to Business and Professions Code
20 Section 2262 and/or committed an act involving dishonesty or corruption which are substantially
21 related to the qualifications, functions, or duties of a physician and surgeon in violation of section
22 2234(e). Respondent's license is therefore subject to disciplinary action under the above noted
23 sections in conjunction with California Code of Regulations section 1360.

24 225. More specifically, respondent committed the following acts or omissions:

25 A. Respondent signed "Doctor's First Report of Occupational Injury or
26 Illness" forms for IOSM pertaining to patients/employees which falsely give the impression that
27 respondent performed the physical examination and performed the clinical diagnostic tests which

1 are listed on the form. This is in fact not the case because respondent never saw the
2 patient/employee; and/or

3 B. Respondent signed, as the IOSM "Medical Reviewing Officer,"
4 "Respirator Use Medical Exam" forms pertaining to patients/employees which indicated falsely
5 that, "This is to certify that the above named employee has been examined in accordance with
6 CAL OSHA rules CCR Title 8 Section 5144 for respirator use" and which contained medical
7 findings and conclusions. Boxes were then checked which represented that the examined
8 patient/employee had a medical history and physical examination, and a pulmonary function test
9 completed. The impression that respondent performed the physical examination of this patient is
10 false because respondent never saw the patient. Furthermore the medical statements made on the
11 form are false because CAL-OSHA requires that medical examinations and procedures be
12 performed by a licensed physician, or under his or her direct supervision, or alternatively by
13 licensed health care providers who may perform such examinations or evaluations independent of
14 a physician. None of these circumstances existed.; and/or

15 C. Respondent signed, as having reviewed, IOSM "Physical Examination"
16 letters addressed to the patient/employee and to his/her employer. The letter were signed by
17 Virginia Siegel and, in part, discloses medical information regarding blood lead tests and urine
18 test results. This letter is a false medical record because respondent never examined the
19 patient/employee. Nor is Virginia Siegel or any other employee of IOSM authorized by law to
20 perform any of the tests or examinations that are listed in the letter because they are not
21 independently licensed to perform these medical services, independent of a physician. In addition,
22 respondent did not personally supervise the performance of any of the medical procedures
23 performed on the patient. None of the individuals employed by IOSM are medical assistants as
24 defined by Business and Professions Code Section 2069. No specific written authorization or
25 standing physician order exists in the medical records provided for the patient which demonstrates
26 that respondent ordered a medical assistant to perform any medical service to this patient. No
27 medical record exists that respondent trained any medical assistant in the performance of any

1 technical supportive medical service. Lastly, respondent was never physically present in the
2 treatment or examination area where any of the medical examinations or evaluation procedures
3 were performed on the patient; and/or

4 D. Respondent signed, as having reviewed, IOSM "Occupational Lead
5 Exposure Questionnaire and Examination" forms pertaining to patients/employees. This
6 document, in part, records medical information regarding physical examination results of the
7 patient/employee. This document constitutes the creation of a false medical record because
8 respondent never examined the patients. Nor is Virginia Siegel or any other employee of IOSM
9 authorized by law to perform any of the tests or examinations that are listed on the document
10 because they are not independently licensed to perform these medical services independent of a
11 physician. In addition, respondent did not personally supervise the performance of any of the
12 medical procedures performed on the patients. None of the individuals employed by IOSM are
13 medical assistants as defined by Business and Professions Code Section 2069. No specific written
14 authorization or standing physician order exists in the medical records provided for the patients
15 which demonstrates that respondent ordered a medical assistant to perform any medical service to
16 this patient. No medical record exists that respondent trained any medical assistant in the
17 performance of any technical supportive medical service. Lastly, respondent was never physically
18 present in the treatment or examination area where any of the medical examinations or evaluation
19 procedures were performed on the patient; and/or

20 E. The IOSM form "OSHA Respirator Medical Evaluation Questionnaire, per
21 OSHA Rules and Regulations Appendix C to 1910.134" indicates that the evaluation will be
22 reviewed only by a health care professional. The form asks for information about personal
23 medical history and also provides for evaluations by the "medical review officer" of the
24 patient/employee's blood pressure, pulse, respiration, and lung sounds. Respondent, however, did
25 not review this form evaluation. It was always reviewed by Ms. Siegel, who is not a physician or
26 other licensed health care professional; and/or

1 F. Respondent signed, as having reviewed, IOSM "Audiometry Result Form"
2 in which the technician performing the test evaluated the patient/employee's hearing and
3 diagnosed hearing loss and/or ear infections. Respondent, however, never met or observed the
4 patients/employees and was not present during the testing. Nor did respondent follow-up on any
5 of the examination results or any of the recommendations; and/or

6 G. Respondent signed CDC form 7354 "TB Infectious Free Staff Certificate"
7 for patients/employees in which respondent certified that they were free of tuberculosis.
8 Respondent, however, did not administer the tests and never met or observed the
9 patients/employees. The tests were given by an IOSM technician, unlicensed and unauthorized to
10 administer such tests. Yet, respondent certified in CDC form 7354 that he evaluated these
11 patients and that the evaluation was done by a physician and surgeon; and/or

12 H. Respondent is identified as the physician requesting the blood lead level
13 test in the "Lead Reporting Forms" sent by IOSM to the Occupational Lead Poisoning Prevention
14 Program ("OLPPP") of the California Department of Health Services. The actual laboratory test
15 results performed by Pacific Toxicology Laboratories were sent to IOSM to the attention of "Lois
16 Sims," not to respondent. Respondent did not perform, nor did he supervise, the blood draw on
17 the employees. It is undocumented whether respondent reviewed the laboratory test results on the
18 blood lead level tests before sent to OLPPP; and/or,

19 I. Respondent's signature appears, as the medical doctor, on a "Visual Acuity
20 Record" for employee Ben M. of employer PMI in which respondent certified that he
21 administered an eye examination. The form states that the test must be administered by an
22 optometrist, medical doctor, registered nurse, or certified physicians' assistant. Respondent,
23 however, did not administer the eye test to this employee and the technician who did perform the
24 test was not qualified to administer the examination.

25 226. As alleged more particularly herein, respondent's license is therefore
26 subject to disciplinary action under the above noted section and/or sections, in conjunction with
27 California Code of Regulations section 1360, for his creation of false medical records, with

1 fraudulent intent, because he knew at the time he was signing and/or reviewing the medical
2 documents that they were false and/or were giving a false impression as to the qualifications of
3 who performed the medical evaluations and testing.

4 **NINTH CAUSE OF ACTION FOR DISCIPLINARY ACTION**
5 **(Business and Professions Code Sections 652, 2234, 2234(e):**
6 **Unprofessional Conduct/Deceptive, False, Misleading, Statements)**

7 227. Respondent's conduct, as set forth in paragraphs 98 through 205
8 incorporated herein by reference, constitutes unprofessional conduct pursuant to Business and
9 Professions Code Sections 2234 and 652 and/or dishonest or corrupt conduct substantially related
10 to the qualifications, functions or duties of a physician and surgeon pursuant to section 2234(e), in
11 conjunction with California Code of Regulations section 1360.

12 228. More specifically, respondent committed the following acts or omissions:

13 A. Respondent aided and abetted in the creation and use by unlicensed persons
14 of a fictitious license known as an **Occupational Health Technician (OHT)**; and/or

15 B. Respondent allowed IOSM to create and disseminate the use of false,
16 fraudulent, misleading, and/or deceptive statements for the purpose of inducing either directly
17 and/or indirectly the rendering of professional medical services to the general public. Specifically
18 Respondent allowed the use and dissemination of a fictitious license known as "**Occupational**
19 **Health Technician**" to be used in letters and medical documents to both patients and/or members
20 of the general public, and/or the title "technician" to designate the employees of IOSM; and/or

21 C. Respondent either knew and/or should have known that the title and
22 certificate for an "**Occupational Health Technician**" was created by Virginia Siegel who issued
23 her employees a certificate after they completed a training program of her creation. Further, the
24 certificates were not issued by the State Department of Consumer Affairs and/or any State of
25 California Licensing Board but by Ms. Siegel who printed the certificates which Respondent
26 signed; and/or
27

1 D. Respondent either knew or should have known that employees of IOSM
2 were using the fictitious title and license of "Occupational Health Technician", or the title
3 "technician", in their correspondence and other communications with the general public.

4 **TENTH CAUSE FOR DISCIPLINARY ACTION**
5 **(Business and Professions Code Section 2234(b):**
6 **Unprofessional Conduct/Gross Negligence re: J.H.)**

7 229. Respondent is subject to disciplinary action under sections 2234 and
8 2234(b) in that respondent is guilty of unprofessional conduct and/or gross negligence in the
9 medical care, evaluation and treatment of patient J.H., as alleged in paragraphs 135 through 141
10 which are incorporated herein by reference.

11 230. More specifically, respondent committed the following acts or omissions:

12 A. The letter of November 3, 1999, addressed to patient J.H., with a copy to
13 the employer and entitled "Physical Examination" in fact does not contain any of the indicia of a
14 physical examination other than the making of recommendations; and/or

15 B. There is no indication that the patient was actually examined by respondent
16 or a properly licensed and qualified health professional who could examine a patient
17 independently of a physician's direct supervision; and/or

18 C. Confidential patient medical information was released to the employer
19 without patient consent; and/or

20 D. Virginia Siegel signed the document with the initials of "MICP" and
21 "OHT" after her name. Respondent is aiding and abetting the fraudulent and/or misleading use of
22 a fictitious license and authorizing a paramedic to inappropriately function outside of the
23 emergency medical system; and/or

24 E. Respondent is aiding and abetting the unlicensed practice of medicine;
25 and/or

26 F. There is a report to patient J.H. with a copy to his employer. The
27 document is entitled "Physical Examination" and dated September 14, 1999. The physical

1 examination was not performed by a physician nor by a properly licensed health care professional
2 who could independently, (without physician supervision) perform a physical examination; and/or

3 G. The September 14, 1999 "physical examination" of patient J.H. is
4 inadequate and contains no elements necessary for a competent examination including in part a
5 failure to indicate the dates that clinical diagnostic tests were performed; and/or

6 H. The September 14, 1999 document contained confidential medical
7 information which was improperly disclosed to the employer ; and/or

8 I. The September 14, 1999 "physical examination" document was not written
9 on identifying letterhead. The person who conducted the physical examination, Mr. Michael
10 McBride is not a physician but a licensed paramedic functioning outside of his scope of practice.
11 Mr. McBride made a diagnosis that, "He does not appear to have any symptoms suggesting a toxic
12 exposure to lead"; and/or

13 J. There is an "Occupational Lead Exposure questionnaire and Examination"
14 dated August 27, 1999 on patient J.H.. The person who conducted the examination was not a
15 physician nor a properly licensed health care professional who could conduct such an examination
16 independent of a physician's direct supervision; and/or

17 K. The August 27, 1999 "physical examination" of patient J.H. is inadequate
18 and contains no elements necessary for a competent examination and the medical history of the
19 patient is incomplete because in part the smoking history is inadequate, no mention of hobbies or
20 past lead exposure has been elicited and documented; and/or

21 L. There is a "Respirator Use Medical Examination" for patient J.H. dated
22 October 27, 1999. The "physical examination" is inadequate and contains no elements necessary
23 for a competent examination; and/or

24 M. The "Respirator Use Medical Examination" dated October 27, 1999 was
25 not done by a physician. The examination was performed either by an unlicensed health care
26 professional who could not conduct such an examination independent of a physician's direct
27

1 supervision or by a licensed paramedic functioning outside of their scope of practice. Therefore
2 respondent is aiding and abetting the unlicensed practice of medicine; and/or

3 N. The "Respirator Use Medical Examination" dated October 27, 1999
4 released confidential medical information of patient J.H. to his employer; and/or

5 O. Respondent signed the "Respirator Use Medical Exam" form dated
6 October 27, 1999 pertaining to patient J.H. as the "Medical Reviewing Officer" which indicated
7 falsely that, "This is to certify that the above named employee has been examined in accordance
8 with CAL OSHA rules CCR Title 8 Section 5144 for respirator use." Boxes were then checked
9 which represented that patient J.H. had a "medical history and physical examination, a pulmonary
10 function test, and that no significant problem was found and that no detected medical condition
11 was found that would place the employee at increased risk of material health impairment." The
12 impression is that respondent performed the physical examination of this patient when in fact
13 respondent never saw the patient. Furthermore the medical statements made on the form are false
14 because CAL OSHA requires that medical examinations and procedures be performed by a
15 licensed physician, or under his or her direct supervision, or alternatively by licensed health care
16 providers who may perform such examinations or evaluations independent of a physician. None
17 of these circumstances existed in this case; and/or

18 P. There is a "Doctor's First Report Of Occupational Injury or Illness" filled
19 out for patient J.H. and dated October 27, 1999. Respondent who signed the form did not
20 personally examine the patient; and/or

21 Q. The person who conducted the examination on patient J.H. for the
22 "Doctor's First Report" dated October 27, 1999 was not a physician nor a properly licensed health
23 care professional who could conduct such an examination independent of a physician's direct
24 supervision or by a licensed paramedic functioning outside their scope of practice. Respondent
25 therefore was aiding and abetting the unlicensed practice of medicine; and/or

26 R. There is an "IOSM Urinalysis Result Form" for patient J.H. dated August
27 27, 1999. The "urinalysis" is inadequate and contains no elements necessary for a competent

1 examination in part because no microscopic examination was conducted. Furthermore it is not
2 clear whether respondent even reviewed this report because his signature is not present as having
3 done so; and/or

4 S. The "Urinalysis Report" dated August 27, 1999 for patient J.H. was not
5 done by a physician. The examination was performed by an unlicensed health care professional
6 who could not conduct such an examination independent of a physician's direct supervision or by
7 a licensed paramedic functioning outside their scope of practice. Therefore respondent was aiding
8 and abetting the unlicensed practice of medicine; and/or

9 T. The "Urinalysis Report" for patient J.H. dated August 27, 1999 which was
10 in his medical record file failed to have a physician interpretation. This failure in part might have
11 caught the inaccurate specific gravity entry of 1.03. The correct clinical finding is 1.030; and/or

12 U. There is an "IOSM Urinalysis Result Form" for patient J.H. dated October
13 27, 1999. The "urinalysis" is inadequate and contains no elements necessary for a competent
14 examination in part because no microscopic examination was conducted. Furthermore it is not
15 clear whether respondent even reviewed this report because his signature is not present as having
16 done so; and/or

17 V. The "Urinalysis Report" dated October 27, 1999 for patient J.H. was not
18 done by a physician. The examination was performed by an unlicensed health care professional
19 who could not conduct such an examination independent of a physician's direct supervision or by
20 a licensed paramedic functioning outside their scope of practice. Therefore respondent was aiding
21 and abetting the unlicensed practice of medicine; and/or

22 W. There is a spirometry report dated October 27, 1999 which was in patient
23 J.H.'s medical record file that failed to identify the name of the patient. One can only assume that
24 it belonged to patient J.H.. This report also failed to have a physician interpretation; and/or

25 X. The spirometry report of October 27, 1999 that is believed to belong to
26 patient J.H. was not performed by a physician. The examination was performed by an unlicensed
27

1 health care professional who could not conduct such an examination independent of a physician's
2 direct supervision or by a licensed paramedic functioning outside their scope of practice.

3 Y. The spirometry report of October 27, 1999 that is believed to belong to
4 patient J.H. was not signed by the person who conducted the test.

5 231. As alleged more particularly herein, respondent is subject to disciplinary
6 action pursuant to Business and Professions Code Section 2234(b).

7 **ELEVENTH CAUSE FOR DISCIPLINARY ACTION**
8 **(Business and Professions Code Sections 2234 and 2234(b):**
9 **Unprofessional Conduct/Gross Negligence re: D.H.)**

10 232. Respondent is subject to disciplinary action under sections 2234 and
11 2234(b) in that respondent is guilty of unprofessional conduct and/or gross negligence in the
12 medical care, evaluation and treatment of patient D.H., as alleged in paragraphs 142 through 151
13 which are incorporated herein by reference.

14 233. More specifically, respondent committed the following acts or omissions:

15 A. There is a report to patient D.H. with a copy to his employer. The
16 document is entitled "Physical Examination" and dated October 26, 1999. The physical
17 examination was not performed by a physician nor by a properly licensed health care professional
18 who could independently, (without physician supervision) perform a physical examination; and/or

19 B. The October 26, 1999 "physical examination" of patient D.H. is inadequate
20 and contains no elements necessary for a competent physical examination; and/or

21 C. The October 26, 1999 document contained confidential medical
22 information which was improperly disclosed to the employer; and/or

23 D. The October 26, 1999 document regarding patient D.H. contained an
24 inadequate medical history;

25 E. Respondent is aiding and abetting the unlicensed practice of medicine of
26 the person who performed the October 26, 1999 physical examination; and/or
27

1 F. There is a "Doctor's First Report Of Occupational Injury or Illness" filled
2 out for patient D.H. and dated October 19, 1999. Respondent who signed the form did not
3 personally examine the patient; and/or

4 G. The person who conducted the examination on patient D.H. for the
5 "Doctor's First Report" dated October 19, 1999 was not a physician nor a properly licensed health
6 care professional who could conduct such an examination independent of a physician's direct
7 supervision and/or was by a licensed paramedic functioning outside their scope of practice; and/or

8 H. Respondent is aiding and abetting the unlicensed practice of medicine of
9 the person who performed the October 19, 1999 "Doctor's First Report"; and/or

10 I. There is a medical report addressed to patient D.H. with a copy to his
11 employer. The document is entitled "Physical Examination" and dated September 14, 1999. The
12 physical examination was not performed by a physician nor by a properly licensed health care
13 professional who could independently, (without physician supervision) perform a physical
14 examination and/or was performed by a licensed paramedic functioning outside their scope of
15 practice; and/or

16 J. The September 14, 1999 "physical examination" of patient D.H. is
17 inadequate and contains no elements necessary for a competent physical examination; and/or

18 K. The September 14, 1999 document contained confidential medical
19 information which was improperly disclosed to the employer; and/or

20 L. The September 14, 1999 document regarding patient D.H. contained an
21 inadequate medical history;

22 M. Respondent is aiding and abetting the unlicensed practice of medicine of
23 the person who performed the September 14, 1999 physical examination; and/or

24 N. The September 14, 1999 document regarding patient D.H. stated that,
25 "Patient has a rash on both of his forearms. " The rash might have been work related and needed
26 further evaluation but there is not documentation that respondent ever saw the patient or followed
27 up on the medical observations; and/or

1 O. There is an "Occupational Lead Exposure Questionnaire and Examination"
2 dated August 27, 1999 on patient D.H.. The person who conducted the examination was not a
3 physician nor a properly licensed health care professional who could conduct such an examination
4 independent of a physician's direct supervision and/or was a licensed paramedic functioning
5 outside their scope of practice; and/or

6 P. The August 27, 1999 "physical examination" of patient D.H. as listed in
7 the "Occupational Lead Exposure Questionnaire and Examination" form is inadequate and
8 contains no elements necessary for a competent examination; and/or

9 Q. The finding in the August 27, 1999 "Occupational Lead Exposure
10 Questionnaire and Examination" form which documented that a "rash was found on both
11 forearms" may have been work related. Accordingly further evaluation was required and a
12 disposition to a physician needed to be recorded in the medical record; and/or

13 R. Respondent is aiding and abetting the unlicensed practice of medicine of
14 the person who performed the August 27, 1999 physical examination; and/or

15 S. There is an "IOSM Urinalysis Result Form" for patient D.H. dated August
16 27, 1999. The "urinalysis" is inadequate and contains no elements necessary for a competent
17 examination in part because "trace/moderate" elements of blood were found in the urine specimen
18 but no follow-up microscopic examination was conducted. Furthermore it is not clear whether
19 respondent even reviewed this report because his signature is not present as having done so;
20 and/or

21 T. The "Urinalysis Report" dated August 27, 1999 for patient D.H. was not
22 done by a physician. The examination was performed by an unlicensed health care professional
23 who could not conduct such an examination independent of a physician's direct supervision
24 and/or by a licensed paramedic functioning outside their scope of practice; and/or

25 U. The "Urinalysis Report" for patient D.H. dated August 27, 1999 which was
26 in his medical record file failed to have a physician interpretation; and/or

1 V. Respondent is aiding and abetting the unlicensed practice of medicine of
2 the unlicensed person who performed the August 27, 1999 urinalysis; and/or

3 W. There is an "Occupational Lead Exposure Questionnaire and Examination"
4 dated October 19, 1999 on patient D.H.. The person who conducted the examination was not a
5 physician nor a properly licensed health care professional who could conduct such an examination
6 independent of a physician's direct supervision and/or by a licensed paramedic functioning
7 outside their scope of practice; and/or

8 X. The October 19, 1999 "physical examination" of patient D.H. as
9 documented in the "Occupational Lead Exposure Questionnaire and Examination" form is
10 inadequate and contains no elements necessary for a competent physical examination; and/or

11 Y. The October 19, 1999 "Occupational Lead Exposure Questionnaire and
12 Examination" form regarding patient D.H. contained an inadequate medical history in part
13 because of a failure to document a smoking history;

14 Z. Respondent is aiding and abetting the unlicensed practice of medicine of
15 the person who performed the October 19, 1999 Occupational Lead Exposure examination; and/or

16 AA. There is an "IOSM Urinalysis Result Form" for patient D.H. dated October
17 19, 1999. The "urinalysis" is inadequate and contains no elements necessary for a competent
18 examination in part because no follow-up microscopic examination was conducted. Furthermore
19 it is not clear whether respondent even reviewed this report because his signature is not present as
20 having done so; and/or

21 BB. The "Urinalysis Report" dated October 19, 1999 for patient D.H. was not
22 done by a physician. The examination was performed by an unlicensed health care professional
23 who could not conduct such an examination independent of a physician's direct supervision
24 and/or by a licensed paramedic functioning outside their scope of practice; and/or

25 CC. The "Urinalysis Report" for patient D.H. dated October 19, 1999 which
26 was in his medical record file failed to have a physician interpretation; and/or

27

1 DD. Respondent is aiding and abetting the unlicensed practice of medicine of
2 the person who performed the October 19, 1999 urinalysis; and/or

3 EE. The "Respirator Use Medical Examination" regarding patient D.H. dated
4 October 19, 1999 was not done by a physician. The examination was performed by an unlicensed
5 health care professional who could not conduct such an examination independent of a physician's
6 direct supervision and/or by a licensed paramedic functioning outside their scope of practice;
7 and/or

8 FF. The October 19, 1999 "Respirator Use Medical Examination" form
9 regarding patient D.H. contained confidential medical information which was improperly
10 disclosed to the employer; and/or

11 GG. The October 19, 1999 "Respirator Use Medical Examination" form
12 regarding patient D.H. contained an inadequate medical history in part because it failed to record a
13 smoking history;

14 HH. The October 19, 1999 "Respirator Use Medical Examination" form
15 regarding patient D.H. contained an inaccurate statement that, "no detected medical condition
16 which would place the employee at increased risk of material impairment of health." Respondent
17 signed the "Respirator Use Medical Exam" form dated October 19, 1999 pertaining to patient
18 D.H. as the "Medical Reviewing Officer" which indicated falsely that, "This is to certify that the
19 above named employee has been examined in accordance with CAL OSHA rules CCR Title 8
20 Section 5144 for respirator use. The findings and conclusions are as follows. . . ." Boxes were
21 then checked which represented that patient D.H. had a "medical history and physical
22 examination, a pulmonary function test, and that no significant problem was found and that no
23 detected medical condition was found that would place the employee at increased risk of material
24 health impairment." The impression is that respondent performed the physical examination of
25 this patient when in fact respondent never saw the patient. Furthermore the medical statements
26 made on the form are false because CAL OSHA requires that medical examinations and
27 procedures be performed by a licensed physician, or under his or her direct supervision, or

1 alternatively by licensed health care providers who may perform such examinations or evaluations
2 independent of a physician. None of these circumstances existed in this case; and/or

3 II. There is a spirometry report dated October 19, 1999 which was in patient
4 D.H.'s medical record file that failed to identify the name of the patient. One can only assume
5 that it belonged to patient D.H.. This report also failed to have a physician interpretation; and/or

6 JJ. The spirometry report of October 19, 1999 that is believed to belong to
7 patient D.H. was not performed by a physician. The examination was performed by an unlicensed
8 health care professional who could not conduct such an examination independent of a physician's
9 direct supervision and/or by a licensed paramedic functioning outside of their scope of practice;
10 and/or

11 KK. Respondent is aiding and abetting the unlicensed practice of medicine of
12 the person who performed both the "Respirator Use Medical Examination" and the October 19,
13 1999 spirometry test; and/or

14 LL. There is a "Respirator Medical Evaluation Questionnaire" dated October
15 19, 1999 on patient D.H.. The person who conducted the examination was not a physician nor a
16 properly licensed health care professional who could conduct such an examination independent of
17 a physician's direct supervision and/or by a licensed paramedic functioning outside their scope of
18 practice; and/or

19 MM. The October 19, 1999 "Respirator Medical Evaluation Questionnaire" form
20 which documented a physical examination of patient D.H. is inadequate and contains no elements
21 necessary for a competent physical examination; and/or

22 NN. The October 19, 1999 "Respirator Medical Evaluation Questionnaire" form
23 regarding patient D.H. contained an inadequate medical history in part because of a failure to
24 review systems;

25 OO. Respondent is aiding and abetting the unlicensed practice of medicine of
26 the person who performed and reviewed the October 19, 1999 "Respirator Medical Evaluation
27 Questionnaire".

1 234. As alleged more particularly herein, respondent is subject to disciplinary
2 action pursuant to Business and Professions Code Section 2234(b).

3 **TWELFTH CAUSE FOR DISCIPLINARY ACTION**
4 **(Business and Professions Code Sections 2234 and 2234 (b)**
5 **Unprofessional Conduct/Gross Negligence re: R.W.)**

6 235. Respondent is subject to disciplinary action under sections 2234 and
7 2234(b) in that respondent is guilty of unprofessional conduct and/or gross negligence in the
8 medical care, evaluation and treatment of patient R.W., as alleged in paragraphs 152 through 161
9 which are incorporated herein by reference.

10 236. More specifically, respondent committed the following acts or omissions:

11 A. There is a report to patient R.W. with a copy to his employer. The
12 document is entitled "Physical Examination" and dated October 26, 1999 and signed by
13 respondent as having reviewed the document. The physical examination was not performed by a
14 physician nor by a properly licensed health care professional who could independently, (without
15 physician supervision) perform a physical examination and/or was performed by a licensed
16 paramedic functioning outside their scope of practice; and/or

17 B. The October 26, 1999 "physical examination" of patient R.W. is
18 inadequate and contains no elements necessary for a competent physical examination; and/or

19 C. The October 26, 1999 document contained confidential medical
20 information which was improperly disclosed to the employer; and/or

21 D. The October 26, 1999 document regarding patient R.W. contained an
22 inadequate medical history;

23 E. Respondent is aiding and abetting the unlicensed practice of medicine of
24 the person who performed the October 26, 1999 examination; and/or

25 F. There is a "Doctor's First Report Of Occupational Injury or Illness" filled
26 out for patient R.W. and dated October 19, 1999. Respondent who signed the form did not
27 personally examine the patient; and/or

1 G. The person who conducted the examination on patient R.W. for the
2 "Doctor's First Report" dated October 19, 1999 was not a physician nor a properly licensed health
3 care professional who could conduct such an examination independent of a physician's direct
4 supervision and/or was a licensed paramedic functioning outside their scope of practice. Therefore
5 respondent was aiding and abetting the unlicensed practice of medicine of the person who
6 performed the October 19, 1999 examination; and/or

7 H. There is a report addressed to patient R.W. with a copy to his employer.
8 The document is entitled "Physical Examination" and dated September 14, 1999. The physical
9 examination was not performed by a physician nor by a properly licensed health care professional
10 who could independently (without physician supervision) and/or was performed by a licensed
11 paramedic functioning outside their scope of practice perform a physical examination; and/or

12 I. The September 14, 1999 "physical examination" of patient R.W. is
13 inadequate and contains no elements necessary for a competent examination; and/or

14 J. The September 14, 1999 document contained confidential medical
15 information which was improperly disclosed to the employer; and/or

16 K. The September 14, 1999 document regarding patient R.W. contained an
17 inadequate medical history;

18 L. Respondent is aiding and abetting the unlicensed practice of medicine of
19 Mr. Michael McBride who signed the September 14, 1999 document and made in part the
20 following medical diagnosis that, "He does not appear to have any symptoms suggesting a toxic
21 exposure to lead"; and/or

22 M. There is an "Occupational Lead Exposure Questionnaire and Examination"
23 dated August 27, 1999 on patient R.W.. The person who conducted the examination was not a
24 physician nor a properly licensed health care professional who could conduct such an examination
25 independent of a physician's direct supervision and/or was a licensed paramedic functioning
26 outside their scope of practice; and/or

1 N. The August 27, 1999 "physical examination" as documented in the
2 "Occupational Lead Exposure Questionnaire and Examination" form of patient R.W. is
3 inadequate and contains no elements necessary for a competent examination; and/or

4 O. The August 27, 1999 report documents in the "Occupational Lead
5 Exposure Questionnaire and Examination" form that a "blood pressure reading of 150/100" was
6 found but no charting was done regarding any further clinical assessment or disposition; and/or

7 P. The August 27, 1999 report documents in the "Occupational Lead
8 Exposure Questionnaire and Examination" that the patient stated that, "he loses feeling in his
9 extremities and that he felt tingling and numbness" but no charting was done regarding any further
10 clinical assessment or disposition to another clinician or family physician ; and/or

11 Q. The August 27, 1999 report documents in the "Occupational Lead
12 Exposure Questionnaire and Examination" form that the patient was complaining of, "numbness
13 and tingling of the hands, shortness of breath, weakness in the hands and joint pains", all of which
14 are consistent with lead poisoning. Yet respondent totally failed to recognize these symptoms as
15 possible lead poisoning thereby increasing the potential serious health risk of
16 the patient; and/ or

17 R. There is an "IOSM Urinalysis Result Form" for patient R.W. dated
18 August 27, 1999. The "urinalysis" is inadequate and contains no elements necessary for a
19 competent examination in part because large quantities of blood were found in the urine specimen
20 but no follow-up microscopic examination was conducted. Furthermore it is not clear whether
21 respondent even reviewed this report because his signature is not present as having
22 done so; and/or

23 S. The "Urinalysis Report" dated August 27, 1999 for patient R.W. was not
24 done by a physician. The examination was performed by an unlicensed health care professional
25 who could not conduct such an examination independent of a physician's direct supervision
26 and/or by a licensed paramedic functioning outside their scope of practice; and/or

1 T. The "Urinalysis Report" for patient R.W. dated August 27, 1999 which
2 was in his medical record file failed to have a physician interpretation; and/or

3 U. There is an "Occupational Lead Exposure Questionnaire and Examination"
4 dated October 19, 1999 on patient R.W.. The person who conducted the examination was not a
5 physician nor a properly licensed health care professional who could conduct such an examination
6 independent of a physician's direct supervision and/or was a licensed paramedic functioning
7 outside their scope of practice; and/or

8 V. The October 19, 1999 physical examination of patient R.W. as documented
9 in the "Occupational Lead Exposure Questionnaire and Examination" form is inadequate and
10 contains no elements necessary for a competent examination; and/or

11 W. The October 19, 1999 physical examination as documented in the
12 "Occupational Lead Exposure Questionnaire and Examination" form states that a "blood pressure
13 reading of 140/96" was found but no charting was done regarding any further clinical assessment
14 or disposition; and/or

15 X. The October 19, 1999 physical examination of patient R.W.. As reported
16 in the "Occupational Lead Exposure Questionnaire and Examination" form contained an
17 inadequate medical history; and/or

18 Y. Respondent is aiding and abetting the unlicensed practice of medicine of
19 Ms. Virginia Siegel who signed the October 19, 1999 "Occupational lead Exposure Questionnaire
20 and Examination" record. In this patient record she made in part the following medical diagnosis,
21 "edema is due to gout"; and/or

22 Z. The October 19, 1999 physical examination as reported in the
23 "Occupational Lead Exposure Questionnaire and Examination" form documents that patient R.W.
24 had complained of weakness in the extremities but no charting was done regarding any further
25 clinical assessment or disposition; and/or

26 AA. There is an "IOSM Urinalysis Result Form" for patient R.W. dated October
27 19, 1999. The "urinalysis" is inadequate and contains no elements necessary for a competent

1 examination in part because the urobilinogen count of 0.2 is not normal and there were traces of
2 ketones present in the specimen but no follow-up microscopic examination was conducted.
3 Furthermore it is not clear who performed the test because a
4 signature is not present identifying the technician; and/or

5 BB. The "Urinalysis Report" dated October 19, 1999 for patient R.W. was not
6 done by a physician. The examination was performed by an unlicensed health care professional
7 who could not conduct such an examination independent of a physician's direct
8 supervision and/or by a licensed paramedic functioning outside their scope of practice; and/or

9 CC. The "Urinalysis Report" for patient R.W. dated October 19, 1999 which
10 was in his medical record file failed to have a physician interpretation; and/or

11 DD. There is a "Respirator Use Medical Examination" for patient R.W. dated
12 October 19, 1999. The "physical examination" is inadequate and contains no elements necessary
13 for a competent examination; and/or

14 EE. The "Respirator Use Medical Examination" dated October 19, 1999 was
15 not done by a physician. The examination was performed by an unlicensed health care
16 professional who could not conduct such an examination independent of a physician's direct
17 supervision and/or by a licensed paramedic functioning outside their scope of practice; and/or

18 FF. The October 19, 1999 "Respirator Use Medical Examination" document
19 contained confidential medical information which was improperly disclosed to the employer;
20 and/or

21 GG. The October 19, 1999 "Respirator Use Medical Examination" document
22 regarding patient R.W. contained an inadequate medical history in part because it failed to record
23 a smoking history; and/or

24 HH. The October 19, 1999 "Respirator Use Medical Examination" document
25 regarding patient R.W. contained an inaccurate statement that, "no detected medical condition
26 which would place the employee at increased risk of material impairment of health." Respondent
27 signed the "Respirator Use Medical Exam" form dated October 19, 1999 pertaining to patient

1 R.W. as the "Medical Reviewing Officer" which indicated falsely that, "This is to certify that the
2 above named employee has been examined in accordance with CAL OSHA rules CCR Title 8
3 Section 5144 for respirator use. The findings and conclusions are as follows..." Boxes were then
4 checked which represented that patient D.H. had " a medical history and physical examination, a
5 pulmonary function test, and that no significant problem was found and that no detected medical
6 condition was found that would place the employee at increased risk of material health
7 impairment." The impression is that respondent performed the physical examination of this
8 patient when in fact respondent never saw the patient. Furthermore the medical statements made
9 on the form are false because CAL OSHA requires that medical examinations and procedures be
10 performed by a licensed physician, or under his or her direct supervision, or alternatively by
11 licensed health care providers who may perform such examinations or evaluations independent of
12 a physician. None of these circumstances existed in this case; and/or

13 II. There is a spirometry report dated October 19, 1999 which was in patient
14 R.W.'s medical record file that failed to identify the name of the patient. One can only assume
15 that it belonged to patient R.W.. This report also failed to have a physician interpretation; and/or

16 JJ. The spirometry report of October 19, 1999 that is believed to belong to
17 patient R.W. was not performed by a physician. The examination was performed by an
18 unlicensed health care professional who could not conduct such an examination independent of a
19 physician's direct supervision and/or by a licensed paramedic functioning outside of their scope of
20 practice; and/or

21 KK. Respondent is aiding and abetting the unlicensed practice of medicine of
22 the person who performed the spirometry testing, the October 1999 "Respirator Use Medical
23 Examination", and the October 19, 1999 urinalysis of patient R.W.; and/or

24 LL. There is a "Respirator Medical Evaluation Questionnaire " dated October
25 19, 1999 on patient R.W.. The person who conducted the examination was not a physician nor a
26 properly licensed health care professional who could conduct such an examination independent of
27

1 a physician's direct supervision and/or was a licensed paramedic functioning outside their scope
2 of practice; and/or

3 MM. The October 19, 1999 "Respirator Medical Evaluation Questionnaire" form
4 which documented a physical examination of patient R.W. is inadequate and contains no elements
5 necessary for a competent physical examination; and/or

6 NN. The October 19, 1999 "Respirator Medical Evaluation Questionnaire" form
7 regarding patient R.W. contained an inadequate medical history in part because of a failure to
8 review systems; and/or

9 OO. Respondent is aiding and abetting the unlicensed practice of medicine of
10 the person who performed and reviewed the October 19, 1999 "Respirator Medical Evaluation
11 Questionnaire".

12 237. As alleged more particularly herein, respondent is subject to disciplinary
13 action pursuant to Business and Professions Code Section 2234(b).

14 **THIRTEENTH CAUSE FOR DISCIPLINARY ACTION**
15 **(Business and Professions Code sections 2234, 2234(c) and/or (d):**
Unprofessional Conduct/Repeated Negligent Acts and/or Incompetence)

16 238. Respondent's conduct, as set forth in paragraphs 98 through 205
17 incorporated herein by reference, constitutes unprofessional conduct in that it demonstrates
18 repeated negligent acts and/or incompetence in violation of Business and Professions Code
19 section 2234(c) and or (d), and thereby constitutes grounds for disciplinary action against his
20 license under this section in conjunction with California Code of Regulations section 1360.

21 239. More specifically, respondent committed the following repeated acts and
22 omissions:

23 A. Respondent repeatedly allowed and facilitated unlicensed individuals
24 and/or licensed paramedics functioning outside their scope of practice to conduct physical
25 examinations and medical evaluations of patients without appropriate training and supervision,
26 without documentation of training and/or in violation of the medical assistant statutes and
27 regulations; and/or

1 B. Respondent repeatedly allowed and facilitated unlicensed individuals
2 and/or licensed paramedics functioning outside of their scope of practice to perform spirometry
3 tests and/or urinalysis tests on patients/employees without appropriate training and supervision,
4 without documentation of training, and/or in violation of the medical assistant statutes and
5 regulations.; and/or

6 C. Respondent repeatedly allowed and facilitated unlicensed individuals
7 and/or licensed paramedics functioning outside their scope of practice to draw blood by
8 venipuncture from patients at the job-site without appropriate training and supervision, without
9 documentation of training, and/or in violation of the medical assistant statutes and regulations.;
10 and/or

11 D. Respondent repeatedly allowed and facilitated unlicensed individuals,
12 and/or licensed paramedics functioning outside their scope of practice, of Industrial Safety and
13 Health, Inc., doing business as Industrial On-Site Medics to order dangerous drugs using
14 respondent's medical license, store the drugs, and administer the drugs to patients without
15 appropriate training and supervision, without documentation of training, and/or in violation of the
16 Medical Practice Act.; and/or

17 E. Respondent repeatedly allowed and facilitated unlicensed individuals
18 and/or licensed paramedics functioning outside their scope of practice to administer dangerous
19 drugs without respondent conducting a good faith prior examination, thereby increasing the
20 potential risk of adverse reactions and/or contra-indications based upon a given patient's medical
21 history, and/or weakened physical condition; and/or

22 F. Respondent failed to create adequate medical records of patients being
23 medically evaluated for lead exposure and for respiration fitness evaluations by using preprinted
24 forms created by Industrial Safety and Health, Inc., doing business as Industrial On-Site Medics,
25 which did not allow for the taking of a complete medical history of the patient and/or failed to
26 allow for a complete clinical review by a licensed health care professional and for documentation
27

1 of systems, and which at times totally ignored the medical questions required by OSHA
2 regulations; and/or

3 G. Respondent allowed the use of, and himself used, the preprinted forms
4 created by Industrial Safety and Health, Inc., doing business as Industrial On-Site Medics to be
5 used by unlicensed individuals and/or by licensed paramedics functioning outside their scope of
6 practice in evaluating the health and physical condition of patients/employees, which forms failed
7 to document the name of the patient to whom the particular report belonged; and/or failed to
8 identify the person who performed the examination and/or test; and/or which failed to document
9 whether respondent had ever reviewed the specific documents; and/or

10 H. Respondent allowed patient medical records to be in the custody and/or
11 control of unlicensed individuals and/or by licensed paramedics functioning outside their scope of
12 practice; and/or

13 I. Respondent either knew or should have known that breaches of patient
14 medical confidentiality were occurring regarding, at minimum, patients J.H., D.H., and R.W.;
15 and/or

16 J. Respondent repeatedly signed forms entitled "Doctor's First Report of
17 Occupational Injury or Illness" pertaining to patients that he did not personally examine thereby
18 giving the false impression that they were examined by a licensed physician and/or a properly
19 licensed person who could examine patients independent of physician direct supervision.; and/or

20 K. Respondent repeatedly signed a form entitled "Respirator Use Medical
21 Exam" which falsely represented that the named employee was examined by a licensed physician,
22 or under his or her direct supervision, or alternatively by licensed health care providers who may
23 perform such examinations or evaluations independent of a physician. The form gives the false
24 impression that respondent performed the physical examination of this patient but respondent
25 never saw the patient.; and/or

26 L. Respondent repeatedly allowed unlicensed employees and/or licensed
27 paramedic employees of Industrial Safety and Health, Inc., doing business as Industrial On-Site

1 Medics to use a fictitious license known as an Occupational Health Technician (OHT) or the
2 misleading title "technician" on correspondence to patients and/or other members of the public.
3 Respondent either knew or should have known that this false title or purported licensure was
4 misleading and/or deceptive; and/or

5 M. Respondent failed on numerous occasions to obtain a microscopic
6 examination of a patient's urine specimen thereby rendering an incomplete patient urinalysis. At
7 a minimum respondent failed to obtain microscopic examinations in the cases of patients J.H.,
8 D.H., and R.W. This failure in part placed the patients at greater risk of having a dangerous lead
9 contamination level go undetected and placed the patient at greater risk by not having protective
10 measures followed; and/or

11 N. Respondent repeatedly aided and abetted the unlicensed practice of
12 medicine by allowing unlicensed individuals and/or licensed paramedics functioning outside their
13 scope of practice to make medical evaluations and diagnoses.

14 240. As alleged more particularly herein, respondent is guilty of unprofessional
15 conduct and/or repeated negligent acts in his actions and omissions as medical review officer for
16 IOSM and is subject to disciplinary action pursuant to sections 2234, 2234(c) and/or 2234(d).

17 **FOURTEENTH CAUSE FOR DISCIPLINARY ACTION**
18 **(Business and Professions Code sections 2234 and 2234(e):**
19 **Unprofessional Conduct/Dishonest and/or Corrupt Acts)**

20 241. Respondent's conduct, as set forth in paragraphs 98 through 205
21 incorporated herein by reference, constitutes unprofessional conduct and constitutes the
22 commission of acts of dishonesty and/or corruption under Business and Professions Code section
23 2234(e), and thereby constitutes grounds for disciplinary action against his license.

24 242. More specifically, respondent committed the following acts or omissions:

25 A. Respondent signed "Doctor's First Report of Occupational Injury or
26 Illness" forms for IOSM pertaining to patients/employees which falsely give the impression that
27 respondent performed the physical examination and performed the clinical diagnostic tests which

1 are listed on the form. This is in fact not the case because respondent never saw the
2 patient/employee; and/or

3 B. Respondent signed, as the IOSM "Medical Reviewing Officer,"
4 "Respirator Use Medical Exam" forms pertaining to patients/employees which indicated falsely
5 that, "This is to certify that the above named employee has been examined in accordance with
6 CAL OSHA rules CCR Title 8 Section 5144 for respirator use" and which contained medical
7 findings and conclusions. Boxes were then checked which represented that the examined
8 patient/employee had a medical history and physical examination, and a pulmonary function test
9 completed. The impression that respondent performed the physical examination of this patient is
10 false because respondent never saw the patient. Furthermore the medical statements made on the
11 form are false because CAL-OSHA requires that medical examinations and procedures be
12 performed by a licensed physician, or under his or her direct supervision, or alternatively by
13 licensed health care providers who may perform such examinations or evaluations independent of
14 a physician. None of these circumstances existed.; and/or

15 C. Respondent signed, as having reviewed, IOSM "Physical Examination"
16 letters addressed to the patient/employee and to his/her employer. The letter were signed by
17 Virginia Siegel and, in part, discloses medical information regarding blood lead tests and urine
18 test results. This letter is a false medical record because respondent never examined the
19 patient/employee. Nor is Virginia Siegel or any other employee of IOSM authorized by law to
20 perform any of the tests or examinations that are listed in the letter because they are not
21 independently licensed to perform these medical services, independent of a physician. In addition,
22 respondent did not personally supervise the performance of any of the medical procedures
23 performed on the patient. None of the individuals employed by IOSM are medical assistants as
24 defined by Business and Professions Code Section 2069. No specific written authorization or
25 standing physician order exists in the medical records provided for the patient which demonstrates
26 that respondent ordered a medical assistant to perform any medical service to this patient. No
27 medical record exists that respondent trained any medical assistant in the performance of any

1 technical supportive medical service. Lastly, respondent was never physically present in the
2 treatment or examination area where any of the medical examinations or evaluation procedures
3 were performed on the patient; and/or

4 D. Respondent signed, as having reviewed, IOSM "Occupational Lead
5 Exposure Questionnaire and Examination" forms pertaining to patients/employees. This
6 document, in part, records medical information regarding physical examination results of the
7 patient/employee. This document constitutes the creation of a false medical record because
8 respondent never examined the patients. Nor is Virginia Siegel or any other employee of IOSM
9 authorized by law to perform any of the tests or examinations that are listed on the document
10 because they are not independently licensed to perform these medical services independent of a
11 physician. In addition, respondent did not personally supervise the performance of any of the
12 medical procedures performed on the patients. None of the individuals employed by IOSM are
13 medical assistants as defined by Business and Professions Code Section 2069. No specific written
14 authorization or standing physician order exists in the medical records provided for the patients
15 which demonstrates that respondent ordered a medical assistant to perform any medical service to
16 this patient. No medical record exists that respondent trained any medical assistant in the
17 performance of any technical supportive medical service. Lastly, respondent was never physically
18 present in the treatment or examination area where any of the medical examinations or evaluation
19 procedures were performed on the patient; and/or

20 E. The IOSM form "OSHA Respirator Medical Evaluation Questionnaire, per
21 OSHA Rules and Regulations Appendix C to 1910.134" indicates that the evaluation will be
22 reviewed only by a health care professional. The form asks for information about personal
23 medical history and also provides for evaluations by the "medical review officer" of the
24 patient/employee's blood pressure, pulse, respiration, and lung sounds. Respondent, however, did
25 not review this form evaluation. It was always reviewed by Ms. Siegel, who is not a physician or
26 other licensed health care professional; and/or

1 F. Respondent signed, as having reviewed, IOSM "Audiometry Result Form"
2 in which the technician performing the test evaluated the patient/employee's hearing and
3 diagnosed hearing loss and/or ear infections. Respondent, however, never met or observed the
4 patients/employees and was not present during the testing. Nor did respondent follow-up on any
5 of the examination results or any of the recommendations; and/or

6 G. Respondent signed CDC form 7354 "TB Infectious Free Staff Certificate"
7 for patients/employees in which respondent certified that they were free of tuberculosis.
8 Respondent, however, did not administer the tests and never met or observed the
9 patients/employees. The tests were given by an IOSM technician, unlicensed and unauthorized to
10 administer such tests. Yet, respondent certified in CDC form 7354 that he evaluated these
11 patients and that the evaluation was done by a physician and surgeon; and/or

12 H. Respondent is identified as the physician requesting the blood lead level
13 test in the "Lead Reporting Forms" sent by IOSM to the Occupational Lead Poisoning Prevention
14 Program ("OLPPP") of the California Department of Health Services. The actual laboratory test
15 results performed by Pacific Toxicology Laboratories were sent to IOSM to the attention of "Lois
16 Sims," not to respondent. Respondent did not perform, nor did he supervise, the blood draw on
17 the employees. It is undocumented whether respondent reviewed the laboratory test results on the
18 blood lead level tests before sent to OLPPP; and/or,

19 I. Respondent's signature appears, as the medical doctor, on a "Visual Acuity
20 Record" for employee Ben M. of employer PMI in which respondent certified that he
21 administered an eye examination. The form states that the test must be administered by an
22 optometrist, medical doctor, registered nurse, or certified physicians' assistant. Respondent,
23 however, did not administer the eye test to this employee and the technician who did perform the
24 test was not qualified to administer the examination; and/or

25 J. Respondent repeatedly allowed unlicensed employees and/or licensed
26 paramedic employees acting outside the scope of their practice of Industrial Safety and Health,
27 Inc., doing business as Industrial On-Site Medics to use a fictitious license known as an

1 Occupational Health Technician (OHT) or misleading designation "technician" on
2 correspondence to patients and/or to other members of the public, particularly employers who
3 were clients of ISH and/or IOSM. Respondent either knew or should have known that this false
4 title or purported licensure was misleading and/or deceptive.

5 243. As alleged more particularly herein, respondent's conduct constitutes the
6 commission of act(s) involving dishonesty or corruption which is substantially related to the
7 qualifications, functions, or duties of a physician and surgeon and is cause for disciplinary action
8 pursuant to section 2234(e) of the Code.

9 **PRAYER**

10 WHEREFORE, complainant prays that the Board hold a hearing on the matters
11 alleged herein, and following said hearing, issue a decision:

12 1. Revoking or suspending Physician and Surgeon's Certificate No. G8475,
13 heretofore issued to respondent Hugh Wang, M.D.;

14 2. Revoking or suspending Physician Assistant Supervisor's License No.
15 SA20668, heretofore issued to respondent Hugh Wang, M.D.;

16 3. Ordering the recovery for the Board of its investigative and prosecutorial costs,
17 and if placed on probation, the costs of probation monitoring; and

18 4. Taking such other and further action as the Board deems necessary and proper.

19
20 DATED: August 22, 2003.



RONALD JOSEPH
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant